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COMMISSION OF INQUIRY INTO THE
USE OF DRUGS AND BANNED PRACTICES
INTENDED TO INCREASE ATHLETIC PERFORMANCE

B E F O R E:

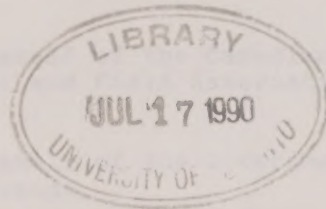
THE HONOURABLE MR. JUSTICE CHARLES LEONARD DUBIN

HEARING HELD AT 1235 BAY STREET,
2nd FLOOR, TORONTO, ONTARIO,
ON TUESDAY, AUGUST 22, 1989

VOLUME 75

NETWORK COURT REPORTING LTD.

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C O U N S E L:

R. ARMSTRONG, Q.C. Ms. K. CHOWN	on behalf of the Commission
R. BOURQUE	on behalf of the Canadian Track and Field Association
J. DePENCIER	on behalf of the Government of Canada
T. BARBER	on behalf of the Sport Medicine Council of Canada
A. PRATT	on behalf of Charles Francis
E. FUTERMAN	on behalf of Ben Johnson
J. FREEDMAN	on behalf of Wilf Wedmann
P. FOURNIER	on behalf of Jean Guy Ouellette
A. BUCKSTEIN	on behalf of the Ontario Track and Field Association

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--- Upon commencing.

THE COMMISSIONER: Mr. Armstrong?

MR. ARMSTRONG: Thank you, Mr.

Commissioner.

5

THOMAS MacWILLIAM: Recalled

--- EXAMINATION BY MR. ARMSTRONG: (cont'd)

MR. ARMSTRONG:

10

Q. Mr. MacWilliam, just before going back to Exhibit 260 and plowing laboriously through the documents as I was doing with you, I wanted to ask you what information or what knowledge you had yourself during the 1980s, early 1980s, about the use of steroids by athletes? Can you assist us?

15

A. Well, I think as I've stated, at that time, the Association in general was aware and becoming increasingly aware of steroids as a problem within our sport, and we were trying to deal with. Personally, I had heard rumors and talk of various athletes using different substances, but we didn't have any hard knowledge of anybody specifically using anything.

20

Our suspicions centered and our speculation centered primarily on the throwers at that point. That was the group of athletes that, from the information that

25

we had on the effect of steroids and the usefulness of them, that was the group that our suspicions sort of focused on.

5 In 1979 at the Americas Trials for the World Cup in Quebec City, I was staying in residence, and I was in the same residence as the athletes were. I recall sitting in one evening when people were just sort of having pizza and food the day before the competition and the athletes talking about some of the throwers and the way you could tell if, you know, they were really jacked up because the pupils would be like pinpoints from amphetamines when they were really wired getting ready to go into the circle to throw. The conversation was, you could always tell that so and so was really ready to throw well because you could just look at him and tell.

10

15

But that was sort of the -- at that point, we weren't doing testing. There wasn't any testing at that particular competition, but it reinforced to me the need for us to get into some kind of a program to try to clean up the act.

20

THE COMMISSIONER: What year was that?

THE WITNESS: That was in '79.

MR. ARMSTRONG:

25 Q. Now looking at the throwing group in

particular, we of course have had a lot of evidence here from Canadian athletes who were throwers. One in particular that we have heard from who admitted his own extensive steroid use and steroid involvement in terms of being a source person to some extent was Bishop Dolegiwicz, and the evidence here from him and others is certainly, I think it's fair to say, from the middle 70s or perhaps even earlier, 1975, Mr. Dolegiwicz was a leading member of Canada's national team and involved in his own steroid use and involved in making steroid information available to others and involved in making steroids available to others. Now did you at any time have any information or belief that Bishop Dolegiwicz from about the middle 70s was on steroids?

A. Well I think, as I say, we suspected the throwers as a group, and Bishop certainly was the leading thrower in the country, and his name, at any time that people were discussing the probable use of steroids by our athletes, his name would certainly come up.

Q. All right. Now let me just take you back to the documents and return briefly to the 1982 policy on doping that was adopted at the annual general meeting in June of 1982 in tab 4. I just want to return to an issue that the Commissioner raised with you yesterday, that is, if you look at the first paragraph

lettered D, it says:

"Random testing can occur at any or all CTFA
championships where feasible, and efforts
should be made to test athletes at national
championships."

Now in that context, I take it "random testing" means that
the events are selected at random out of a hat, as it
were, and the positions of the finishers who are going to
be tested are selected at random out of a hat; is that
right?

A. That was the way that our policy was
initially implemented, that we were told within the sport
that it had to be random. We couldn't focus on any
particular group, that it had to be seen as being strictly
random chance that an athlete was selected. That policy
was introduced, as I say, in June of '82.

It happened later that year I was in Athens
at the European Championships. Because of my position
with Canadian Track and Field, I had the opportunity to go
in and talk to the people at the doping control station at
the European Championships, and I asked them about their
selection process and what they did and explained ours.
Basically they laughed at me and they said, "You guys are
crazy. Why are you randomly selecting and picking women
race walkers and high jumpers instead of focusing on the

events where the drugs are being used and where there is a problem?"

THE COMMISSIONER: But also, the random testing there would not necessarily mean the winner would be tested?

THE WITNESS: That's correct.

THE COMMISSIONER: You say maybe two of the three would be tested or one out of three of the top --

THE WITNESS: Yes, that's correct.

THE COMMISSIONER: And then one or more out of the rest of the group?

THE WITNESS: That's the way the practical implication of the --

THE COMMISSIONER: And that would be called "random testing" at competitions?

THE WITNESS: Yes.

MR. ARMSTRONG:

Q. Is it not a fair assumption that what this policy was addressing at that time was a program that would involve testing at competition? You really were not addressing the issue in 1982 of what we now understand to be out-of-competition testing?

A. No. The next paragraph, paragraph (e), that all CTFA carded athletes and any non-carded athletes

selected to national teams must submit to what we called "random testing" as required, and that implies -- that doesn't "imply". That "states", in the terms of the day, "out-of-competition testing".

5 THE COMMISSIONER: I must say, I don't read it that way. I read it the same as paragraph (d) that the athletes must agree to the random testing set forth in paragraph (d), that is, competition testing.

10 THE COMMISSIONER: No, because the recommendation in policy in (d) was where feasible, an effort should be made to test all athletes at national championships. Now the impracticality of trying to test 500 athletes at a competition is just, you know, overwhelming.

15 THE COMMISSIONER: But the athletes would have to agree to be so tested at competitions on a random basis. I must say that's the way I read this. Perhaps I was wrong.

20 THE WITNESS: The intention of the policy, very clearly in the terms of the day, was that there be testing at any or all national championships and that carded athletes and athletes on national teams be prepared to test, and what it says there is "random testing", but in the terms of the day, we would now call that
25 out-of-competition testing, at any time during the year.

That was the intention of the policy, and it would have been implemented except we could never get the funding from Sport Canada to do anything other than competition testing.

5

MR. ARMSTRONG:

Q. Well let me ask you this, Mr.

10

MacWilliam. Yesterday you indicated to me that the document that appears at tab 5 was your Doping Control Standard Operating Procedures Manual which was developed as in fact the document to implement the policy enunciated in June of '82; is that correct?

15

A. The doping control standard operating procedures policy was developed over a period of two years commencing really with our experiences in Regina in 1981 and then developed on a very formal basis in the period between the National Championships, Commonwealth Trials in 1982 and the summer of 1983 to provide the guidance for a doping control station at a competition to set up the guidelines to how to basically go about implementing doping control in a competition setting.

20

Q. Yes, and it sets out the procedure by which you're going to implement your policy of 1982?

25

A. It sets out the standard operating procedures for the conduct of a doping control station.

Q. There of course is, as I read it, and I can't tell you that I've read every of it but I perused it last night, but there was nothing that I was able to turn up on a brief perusal that would suggest that this
5 procedures manual addresses the issue of out-of-competition testing?

A. That's correct, because this procedures manual was set up for the conduct of a doping control station at a competition.

10 Q. Indeed, during your tenure as the technical director and subsequently as a consultant responsible in this area up to 1987, did you ever in fact develop a procedure for out-of-competition testing?

A. Yes, we did.

15 Q. And that was not until 1986, however?

A. That's correct.

Q. So isn't it fair to say that from '82 to '86, what was in the mind of the Board of Directors of the CTFA and what was in your mind was to get off the
20 ground a doping control procedure that addressed doping control during the course of competition?

A. Very definitely we wanted to get off the ground procedures that were clearly defined and outlined for in-competition testing, but also very clearly
25 in our mind was as soon as possible to start to implement

out-of-competition testing. The procedures hadn't been fully developed to carry that out, but as soon as we'd had the funding to do it, then we would have started to develop the procedures. It was a little bit -- when we
5 didn't have funding to carry out a program, it was perhaps a little bit, you know, premature to develop procedures because you don't know how you're going to fund them. As far as we were concerned, we could take aspects of the procedure for competition testing and apply it to
10 out-of-competition testing with some modification.

Q. Well, it's a little bit of the chicken and the egg, I suspect, but in fairness, you can't really go to Sport Canada and say, we want \$100,000 or \$50,000, or whatever, to run a doping control program unless you're
15 able to show to them what it is you're going to do and how you're going to do it to indicate what the cost might be; isn't that fair? I haven't asked Sport Canada this, but it seems reasonable they might well say that to you?

A. Well, they never did. They never came back -- well until 1986, they never came back and said
20 "Show us your procedures for out-of-competition testing." They just simply did not include funding for out-of-competition testing in 1982 and 1983 and 1984.

THE COMMISSIONER: What communication or
25 representation did you make to Sport Canada which they

responded to? Is there any document here?

THE WITNESS: Part of our annual budget submission each year included doping control testing.

THE COMMISSIONER: Yes, but was that for out-of-competition testing?

THE WITNESS: The submission in 1982, the budget submission after Ms. Hoffman came to the Board meeting in the fall of 1981 and requested or indicated that Sport Canada would be prepared to support a testing program in 1982, the submission to Sport Canada did include out-of-competition testing, but the only thing that was improved was in-competition testing.

In 1983, our submission to Sport Canada for doping control was not accepted at all. There was no funding made available for doping control except that we were told if it was a priority, we would be allowed to use the money allocated under the national team program block of funding to do doping control, and we then were put in a position of having to decide internally and fight internally as to whether we would use the money to do doping control or to send an extra five, six, ten athletes on a European competition experience. That was the kind of dilemma, if you like, that the Association faced. We made the decision to do limited testing in 1983 again and carried that out.

MR. ARMSTRONG:

Q. Well, if we turn over -- well, let's just take this in chronological order so that we've covered things off. This is a bit out of context, but let me just cover tab 6 in your binder.

THE COMMISSIONER: Well, before we get to that, I'm reading your manual in July '83, and the notice to athletes. There is no reference there to out-of-competition testing at all.

THE WITNESS: No, because this procedures manual was designed specifically for the conduct of the doping control station at a competition.

THE COMMISSIONER: I understand. Go ahead, Mr. Armstrong.

MR. ARMSTRONG:

Q. And then what you do with this procedures manual that is drawn up 13 months, 14 months after your 1982 policy, in September '83, if you look at tab 6, you circulated to a representative of Sport Canada, Mr. Heikkila saying:

"Dear Bill, just to keep you up to date on our work in the doping control area, enclosed find what I hope is it the

penultimate draft of our standard operating
procedure's manual."

There is a letter the same date to Professor Beckett in
London asking for his comment, if he has any, and then a
5 letter of September 30th to Mr. Holt of the IAAF saying in
the middle paragraph, "I'd greatly appreciate it if you
could review the document and send any comments, et
cetera."

10

15

20

25

Then, is it not so that you are still at this point in the summer-fall of 1983 still really have got your procedure in a draft form, still inviting comments from appropriate people, I am not being critical of it, but you are still dealing solely with the issue of in-competition testing, and you haven't really moved on to a serious consideration yet of out-of-competition testing?

A. Well, for one thing we wanted to make very certain that the procedures that we established were soundly based and in accordance and acceptance -- and would be accepted by our international federation and the IOC so that if we had any positive tests that they would accept our results, they weren't going to come back to us and say your procedures are faulty. And this was an ongoing and evolutionary process.

The Procedures Manual went through a number of drafts. We used it at various competitions on an experimental basis, tried it out, tried to see what worked, what didn't work, make adjustments to the policy, and that's the process that was gone through over the period of 12 to 14 months.

And obviously our first concern, because the in-competition testing was something that was approved and we had funding for, that's where we started. And that's what we worked on. And we wanted to make certain that

that was down pat and down solid before we moved on to anything else. But we were still prepared and still wanted to go ahead with out-of-competition testing.

Q. Well, then you did your testing at the national championships for the first time back in 1981 in Saskatoon, and did Sport Canada --

A. In Regina.

Q. -- in Regina. Did Sport Canada pay for that?

A. No, that came out of CTFA's own self-generated funds.

Q. Then in 1982, as I understand it, you didn't get any direct money from Sport Canada earmarked for --

A. No, in 1982 we did.

Q. I am sorry.

A. We did in 1982. We got money specifically earmarked for doping control at the Canadian championships, 40 tests.

THE COMMISSIONER: That's in addition to the amount --

THE WITNESS: Outside of the national team block, we did get specific funding in 1982.

MR. ARMSTRONG:

Q. All right.

A. In 1983 we did not.

Q. Well, now, if we go to tab 7, in 1983

5 there is correspondence between you, on behalf of the CTFA, and Mr. Heikkila of Sport Canada, and he appends a communique, which I take it was a press release, to his first letter to you enunciating Sport Canada's position in regard to doping saying that:

10 "Drug use by athletes has been a concern of Sport Canada for some time... "

"Sport Canada is unequivocally opposed to the use by Canadian athletes, coaches, sports scientists, or medical practitioners of any
15 substance currently on the banned substance lists of the international sports federations or the International Olympic Committee."

And so on. Then you --

20 THE COMMISSIONER: At the bottom I think, the last paragraph, I think, is rather important.

MR. ARMSTRONG:

Q. "In sum, Sport Canada regrets the
25 circumstances --"

THE COMMISSIONER: No, the last paragraph of the first page.

5

MR. ARMSTRONG:

10

Q. "Sport Canada holds the international sport federations ultimately responsible for the enforcement of drug controls and, with the advent of new technology, now calls on Canada's national sports federations and the international sport federations to undertake strict enforcement of anti-drug use rules."

15

So --

20

25

A. I think it is important to look at the date of the communication of September 22 and realize we have now passed a watershed in the history of the Canadian sport, that being the Pan-American Games where two Canadian athletes tested positive for steroids and lost their medals, the two weightlifters. And all of a sudden, Sport Canada took a position. And to that point they had not. And that's the point that we tried to make with them. That's the point we had in editorials, of letters to Abby Hoffman, of editorials of the policy that was

written -- a submission that I made in 1981 that Sport Canada did not take a policy position, did not set policy, and would not set policy. That was a blanket across-the-board Canadian sport position until this -- the positive tests at Caracas, Venezuela in 1983. And that was a watershed.

And all of a sudden in September of '83, I get a letter from Bill Heikkila saying, "Yes, we are prepared to fund your testing program." Our testing program had taken place in June and July and at which point we were operating on our own funds. There was no funding from Sport Canada.

THE COMMISSIONER: Well --

THE WITNESS: Our request for funding for doping had been turned down.

THE COMMISSIONER: Excuse me, there is no additional funding. Why is it the responsibility of the sports federations to make certain that their athletes comply with the rules? Isn't that your responsibility?

THE WITNESS: Very definitely it is.

THE COMMISSIONER: Well, then if it was necessary to do that, why wouldn't you have used your own funds to do that?

THE WITNESS: Because --

THE COMMISSIONER: Isn't it the

responsibility -- all these national sports organizations are funded by the Government of Canada, Sport Canada, that's you are funded 45 to 50 percent of your total budget, is that right?

5 THE WITNESS: At that time it was considerably higher than 45 or 50 percent, yes.

THE COMMISSIONER: More than that. And that is to allow you to carry on your activities. Why isn't it your responsibility as the sports federation to
10 make certain that the money being granted by the Government of Canada to sports federations is consistent with the rules of the game. That's your athletes are complying with the rules?

THE WITNESS: I couldn't agree with you
15 more, sir.

THE COMMISSIONER: All right.

MR. ARMSTRONG:

Q. Let me just ask you this question, too.
20 Why does Sport Canada, and perhaps this is a rhetorical question, but why does Sport Canada have to enunciate a policy that says that we are against drugs and you should obey the rules about drugs.

Your sport has had a rule since -- IAAF
25 since 1971 has been opposed to the use of drugs and the

CTFA since 1976 is on the record with a clear statement as we have seen against the use of drugs. You don't really need Sport Canada to tell you that you should be enforcing your own rules and making a statement in that respect?

5 A. No, again, I couldn't agree with you more. What we were asking for Sport Canada was to make certain that all athletes in Canadian sport were all playing under the same rules.

10 The rules in track and field at the international level and at the national level were much stricter than the rules in many other of our national sporting organizations. And what we were trying to do was to say let's all play under the same ball park, let's all play on the same playing field in terms of the rules that
15 we apply to our athletes because of the implications that the rules -- that if we strictly enforce our rules, the implications they have on funding for the association and for individual athletes.

20 And what we were trying -- trying to do was to, if you like, protect the rights of our athletes to have the opportunity to receive funding.

25 We very definitely were interested in enforcing the rules of our sport and seeing that our rules were followed. But we were also having to -- finding ourselves in the position where we have to also represent

our athletes, the athletes in our sport, so that they are treated fairly and given the same opportunity for assistance that athletes in other sports were receiving.

Q. All right.

5 THE COMMISSIONER: The funding of athletes is a separate account of Sports Canada?

THE WITNESS: That's correct.

THE COMMISSIONER: That's not under your budget?

10 THE WITNESS: That's not out of our budget, no.

MR. ARMSTRONG:

15 Q. All right. Then turning to this correspondence, and I am not going to review every letter, all of the letters are there in tab 7 for anyone to read who wishes to do so, but if we look at the letter of October 31, 1983, this is your letter to Sport Canada setting out what it is that you propose to do by way of
20 doping control in the fiscal year '83 - '84. And you set out what costs have been incurred up to that time. And then you indicate that there are further plans to do 30 tests at the Canadian Senior Indoor Championships in February, 30 tests at the Eastern Canadian Junior
25 Championships in Sherbrooke in March, and up to 40 tests,

random spot checks of individuals.

Then you give an estimated cost of all of that to be \$12,000.00. And then at the top of page 2 you say:

5 "This would place the total cost for the
1984/84 fiscal year for the doping
programs of the CTFA at about \$13,500.00. I
would appreciate hearing at the earliest
possible time as to the funds which would be
10 available so that we could begin to put into
operation, the preparation for this
testing."

And then the reply of Sport Canada is dated
January the 20th, from Mr. Heikkila to you saying that:

15 "This will confirm Sport Canada's
willingness to provide up to \$10,000.00
during the fiscal year 1983-84 for:

a) support of drug testing costs already
incurred at ...",

20 "b) up to 100 tests at

Canadian Senior Indoor Championships and
the Eastern Canadian Junior/CIAU
Championships.

From discussions with Don Fletcher it
25 appears that some monies may be available in

CTFA's free balance for these costs."

Now, do I understand that it was your position upon receipt of that letter that because Sport Canada was only given you \$10,000.00 out of a requested
5 \$13,500.00 that you were not free to proceed with any out-of-competition testing?

A. It wasn't my interpretation; that was the statement very clearly when it says -- it says what they would fund and they did not include our request for
10 doing any out-of-competition testing.

Q. All right.

A. The government works on line items and that wasn't included as a line item.

Q. And is that what would have happened?
15 Are you saying that if you said, well, look, we have got \$10,000.00 here, we won't do some of the tests that we had planned to do in competition, we are going to do some tests out of competition. What would have been the result of that, would Sport Canada say you can't do that?

20 A. They would not have funded it.

Q. I see.

THE COMMISSIONER: What's does it mean that there may be additional funds "free balance", what does that mean, of these costs?

25 THE WITNESS: Well, it means that within a

project budget that had been approved by Sport Canada that not all the monies had been spent and it was projected that not all the monies would be consumed by the end of fiscal year.

5 So, Sport Canada would regard that money as being in their terms a free balance and that what they were doing was giving us the authority to spend money that they had already given to us and approved for other projects to move that money into spending in a different
10 area.

 THE COMMISSIONER: So, if there was \$3,500.00 there that would have been given you full complement of money?

 THE WITNESS: No. What they were saying
15 was they would allow us to use the \$2,000.00 from the officials travel, they included that in the 10,000 that they were allocating to us.

 THE COMMISSIONER: Thank you.

20 MR. ARMSTRONG:

 Q. All right. Then just in the chronology, Mr. MacWilliam, I want to take you back to a letter that I had left out because we were talking about other things.

25 In tab 6, there is a letter dated October

20, 1983, from Mr. McNulty, the President of the CTFA, to the Canadian Olympic Association. And this letter is principally here, as I understand it, because in the penultimate paragraph on the first page it reads:

5 "We feel the CTFA has been a leader in Canadian sport and one of the leaders in the international athletics community in its work to eliminate the use of ergogenic aids. At the international level this has
10 included a recommendation that no world record be recognized without doping control, lobbying for random testing world wide, and for stricter enforcement of the rules on the use of these substances."

15 And as I understand it, it indeed was as a result of the position taken by the Canadian Track and Field Association that at the international level doping control was implemented when a world record was broken, is that so?

20 A. Yes. We made that proposal, or our representatives made that proposal, at the IAAF congress in Athens in 1982. And it was basically received as a notice of motion. And then in 1984, at the IAAF congress in Los Angeles, that motion was actually ratified.

25 At that time it was moved by another country

and seconded by yet another country, but it did come in
part at least from our impetus in 1982. And it also in
1982 at the IAAF congress we had pushed again for what we
in these terms call random testing world wide in which we
would now call out-of-competition testing.

A. That letter has been drafted by me to go over Mr. McNulty's signature, and it was in response to the COA position that they created immediately following the Pan-Am Games. What we were basically trying to do was to make certain that when policies were set that the policies were consistent throughout Canadian sporting organizations so that the COA policy wasn't riding off in one direction with one set of penalties and Sport Canada riding off in another direction with another set of penalties and the international sporting organization and the national sports organization with yet another set of penalties.

Q. All right. Then we know from other evidence that we have had going back to the chronology as we work our way through the documents that, in December of 1983, Sport Canada enunciated it's anti-doping policy, and indeed I believe either at that time or shortly thereafter you became a member of the Sports Medicine Council of Canada's Advisory Committee on Doping Control; is that correct?

A. That's correct.

Q. And the next series of documents in tab 8 set out either memos or correspondence relevant to the then established Sport Canada policy of requiring national sporting organizations to formulate doping control plans;

is that correct?

A. That's correct.

Q. All right. I'm not going to dwell on those documents again. They are there as part of the record.

If I could move with you, Mr. MacWilliam, at tab 9, what I understand to be here is the kind of information or package that was put together for your 1985 doping control program for submission to Sport Canada; is that correct?

A. Yes, that's correct. That's the type of program that was required by each national sports governing body to be submitted to Sport Canada as part of the Sport Canada anti-doping effort. We were required to show what our policy was, review our testing of the preceding year, outline the testing procedures for the coming year, to show what educational programs we were undertaking and also what international lobbying efforts we were making. If we go back again to the Canadian Track and Field Association's policy in 1982, that's exactly what we started doing at that time.

Q. And I just have one question about one of the documents in this group, and that is at the page marked number 7. It's not necessarily the seventh page, but there is a page marked number 7 as part of a document

entitled "Canadian Track and Field Association Doping Control Policy and Plan - 1985". Part III is headed "CTFA Plan for Testing - 1985".

Do you see that, Mr. Commissioner?

5 THE COMMISSIONER: Yes, I have it, thanks.

MR. ARMSTRONG:

Q. And you've got it, Mr. MacWilliam?

A. Yes, I do.

10 Q. That document, as I read it, in 1985 lists testing to be done only at competition or at training camps; is that correct?

A. That's correct.

15 Q. And of course the athletes would know that there was going to be testing at competitions. Presumably from the evidence that we've heard, they would also know that there was going to be testing at these training camps; is that correct?

20 A. I'm not certain whether or not they were aware that there would be testing at the training camps.

Q. Well, for example -- I forget. We'll see it in a moment. Was this a year that the sprint group went to --

25 THE COMMISSIONER: Santa Monica.

MR. ARMSTRONG:

Q. They go to Santa Monica here, but did they also go to Provo, or was that the following year?

5 A. No. The camp was switched from Santa Monica to Provo. The camp actually took place in Provo.

Q. And in the evidence that we've had, my recollection is that there certainly was no secret that Charlie Francis' group, for example, were going to be
10 subject to testing at the Provo training camp? We've heard a lot of evidence about that camp.

A. Well, it wasn't just Charlie's group. It was the sprinters, as a group, were being tested at that camp. There was no focus on any particular group.

15 Q. And it was not unannounced?

A. I believe that the manager, domestic competitions manager of the Association, had informed the head coach that the intention was to do testing at that camp.

20 Q. And then the jumpers' training camp and the throwers' training camp, were those two camps held?

A. The jumpers' training camp took place. It actually took place before we had budget approval from Sport Canada, and the throwers' training camp was not
25 held.

Q. And no testing was done at the jumpers' training camp?

A. No, that's correct.

5 Q. So in 1985, there was no provision in your plan and indeed, as we know it, no out-of-competition testing took place?

A. Well, there was testing at training camps which was not in-competition testing.

10 Q. Well, okay. Maybe I put it wrongly. You're right. There was no unannounced out-of-competition testing --

A. That's correct.

Q. -- either planned for or done?

A. That's correct.

15 Q. Again at tab 10 are a further series of documents that relate to the doping control ban in 1985, and I don't propose to pause to ask you any particular questions about it. Again, it's there for the record and for others to ask questions if they are so inclined.

20 Then, Mr. MacWilliam, there was a doping incident in June 1985 involving a throwing athlete called Harold Willers; is that correct?

A. Yes, that's correct.

25 Q. Can you just tell us about the circumstances of that situation? I don't propose that we

review it in any detail, but what happened and what was the end result?

5 A. The competition where the testing was carried out was what we called the Canadian Inter-Regional Team Championships. They were held in St. John, New Brunswick. I think Mr. McKinty's correspondence refers to them as the Inter-Provincial Championships. They had not been part of our original plan to do testing there, but because we had not tested at the throwers' camp and
10 because we had not tested at the jumpers' camp, we applied to Sport Canada to use the tests that we had allocated for those two training camps and to do that testing at the championship in St. John, New Brunswick, which was also being used as a selection competition for the Pacific
15 Conference Games.

 We set up testing the results of the site later that year of the Canada Summer Games so that what we wanted to do was use this as a practice run, if you like, for the people that would be carrying out the doping
20 control at the Canada Summer Games, and so the two nicely tied together in terms of using tests that were already approved and also giving practice for the Canada Summer Games people.

 At that competition, Mr. Willers was the
25 winner of the hammer competition and was, as a result,

selected to the Pacific Conference Games team. He was one of the athletes identified for and selected for doping control and provided the necessary sample, which was then sent to the lab in Montreal.

5 Very shortly thereafter, in fact the team had already left for California for the Pacific Conference Games, we received word that Mr. Willers' first sample had tested positive and that we would need to do a retest on him. Mr. Willers was informed that he --

10 Q. Well, not a retest, but --

 A. Well, not a retest. A test of the B sample, yes. Sorry.

 And he would not be allowed to compete or to represent Canada in the Pacific Conference Games. He was
15 asked if he had any comments to make, if there was any reason why the first sample should have tested positive and was there a likelihood basically of the second sample testing positive, and Harold actually asked me to go to Montreal to represent him at the opening of his B sample
20 to ensure that it hadn't been tampered with.

 While I was talking to him on the phone, I said, "Harold, is there any reason why this thing has tested this way?", because I'd known the young man for a number of years. He was the top hammer thrower and had
25 been the top hammer thrower in the country since Scotty

Bowman -- Scotty Neilson --

THE COMMISSIONER: Wrong sport.

THE WITNESS: Wrong sport, you're right.

5 Scotty Neilson had retired, and to me, Harold just
exemplified a very fine young athlete who was highly
unlikely to be involved in the use of steroids. In fact,
I had said to one of the nurses in the doping control
station in St. John when Harold was waiting to pass his
sample that, you know, this really was an exercise in
10 futility with Harold because he's the last athlete that I
would ever expect to test positive. His positive test
result came as a real blow to me because I just couldn't
imagine it of the man.

15 I talked to him on the phone and he said,
yes, he had actually used what I think he said was
Dianabol, and that he was -- you know, his training had
plateaud and he was very frustrated and he had been
Canadian champion for four years and he hadn't been carded
and he was having some financial difficulty and trying to
20 continue training and going to school and his wife had
just had another baby and, you know, it was just a long
tale of woe. In desperation, he decided he was going to
try steroids just to see if he could get himself up to a
level where he at least could get carded and get carding
25 assistance, and he was really upset. Then of course the B

sample tested positive, and he was suspended.

MR. ARMSTRONG: Mr. Commissioner, for your information and assistance, tab 11 contains some of the CTFA relevant documents concerning Mr. Willers' case.

5 THE COMMISSIONER: Well, it may be not be important, Mr. Armstrong. I was just going through tab 10. There was some talk about the Provo training camp.

MR. ARMSTRONG: Yes.

10 THE COMMISSIONER: And there was some reresistance by the coaches, apparently. Is that right, Mr. MacWilliam, how the doping was to be conducted at that camp? I'm reading Mr. McKinty's memo admonishing Mr. Mach for -- it's at tab 10. This is from Mr. McKinty to Mr. Mach. He was what, then? The manager of domestic
15 programs? I'm not quite sure what that office was.

THE WITNESS: Well, that's the title that was given to basically the position I had held as technical director. The job title was changed when Mr. McKinty was hired. In fact --

20 THE COMMISSIONER: Oh, I see. '84 was the last year you held the office of technical director; is that it?

THE WITNESS: That's correct.

25 THE COMMISSIONER: And the title was changed to manager of domestic programs?

THE WITNESS: That's right. There were no professional staff members who were directors after that point.

THE COMMISSIONER: He says:

5 "The strategies for doing doping control testing and the carrying out of testing is not a coach's domain."

This is from McKinty to Mach.

10 "I refer to 1 the comment of Tom's report regarding the coaches being adamant that the testing had to be carried out at a meet; 2 the coaches did the draw to determine those who would be tested; and 3 the fact that as a result of coaches' reactions to the idea
15 of educational presentation, it wasn't presented. Neither of these situations should occur again!"

Were you involved in this at all?

20 THE WITNESS: At that point, I was acting in a consultant capacity and assisting both CTFA and Sport Canada and some of the other sports with their testing programs, and I had gone to Provo to do the testing in accordance with the annual plan; and yes, there had been some concern expressed by the coaches in Provo about the
25 testing program. They did not accept the fact that the

Board policy of 1982 allowed out-of-competition testing, and they insisted that the testing had to be carried out in conjunction with a competition.

5 I wasn't going to go down there and get myself in a physical confrontation with these guys, so there was a competition as part of the training camp, and we just made the necessary modifications to carry out the testing following the competition. In actual fact, some of the athletes identified for testing did not compete in
10 the competition, but they were identified and then came and passed their sample as soon as the competition was over.

THE COMMISSIONER: Well, did the coaches -- did the draw determine those who would be tested at that
15 meet?

THE WITNESS: What we did, because this was in essence an out-of-competition situation, we put the names in a hat, and I did that. I took every athlete who was at the camp, put the names in the hat and literally
20 passed the hat around and let the coaches pull the names out so that it was a random draw of the athletes. There was no question of that, and nobody could come back and say that we were persecuting any athlete or any group of athletes.

25 THE COMMISSIONER: What was Mr. Mach's

explanation for this?

THE WITNESS: I never saw any response from Mr. Mach to Mr. McKinty.

5 THE COMMISSIONER: I see, but you were there at the time. Did you speak to Mr. Mach?

THE WITNESS: Yes, I certainly did in Provo, and he was not about to back the position that testing would take place, and, you know, he was quite prepared to try to make the coaches happy and set up something that would accommodate both sides.

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THE COMMISSIONER: But he was against out-of-competition testing?

THE WITNESS: No, he was not against out-of-competition testing; he just didn't want to create any kind of a confrontation either.

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THE COMMISSIONER: I'm sorry, Mr. Armstrong. I interrupted you.

MR. ARMSTRONG:

20 Q. I see the next document after the one the Commissioner referred to is your memo, a report on the doping control sprint training camp, Provo, Utah. About the fourth paragraph down, you say:

25 "From discussions with Brian, it was evident that there was little interest in the A.V.

presentation, if not outright hostility towards it, so the idea of the educational presentation was dropped."

Now was that dropped with the concurrence of the head coach, Mr. Mach?

A. We had requested before I went down there that arrangements be made that there be a slide projector, that there be a room set up and that there be a time set aside when all athletes would be available to view the educational program that had been designed by the Sports Medicine Council. When I arrived, none of the arrangements had been made, and Brian McKinnon, who was the camp manager, indicated to me that the athletes really weren't interested and weren't prepared to come to it, and he hadn't made any arrangements. Again, I wasn't prepared to get into a confrontational situation with these people.

THE COMMISSIONER: What was Mr. Mach's position at that time? Was he the national coach then?

THE WITNESS: He was the national program director and high performance consultant for the Association.

THE COMMISSIONER: He says, "In the evening, I met with the coaching staff of the camp, Gerard." Would that be Gerard Mach?

The WITNESS: He was included there, yes.

THE COMMISSIONER: Brian. That's Brian
McKinnon?

THE WITNESS: Brian McKinnon, yes.

THE COMMISSIONER: Charlie Francis. And
5 who is Alex Gardiner?

THE WITNESS: Alex Gardiner was another
sprint coach. He's from Winnipeg.

THE COMMISSIONER: "...and outlined the
plans for the testing. They were adamant that the testing
10 had to be carried out in conjunction with a meet." That
was their position, I gather?

THE WITNESS: That's right.

THE COMMISSIONER: "Fortunately, a
mini-meet was scheduled for the next afternoon..."
15 Therefore, as far as you were concerned, it wasn't a
competition testing, to compromise the situation at that
time.

THE WITNESS: It was a compromise
situation, that's correct, sir. The athletes were
20 selected before the competition, but the testing took
place after the competition.

THE COMMISSIONER: All right. Sorry, Mr.
Armstrong.

MR. ARMSTRONG:

Q. So what appears really to be emerging here is that your own constituents, really, that is your coaches and the athletes, appear, at least some of them, to be opposed to the idea of out-of-competition testing?

A. Yes.

THE COMMISSIONER: Did you ask Mr. Mach why?

THE WITNESS: The answer -- I didn't ask Mr. Mach why. I asked them all what was the problem, and it was all along the basis that, you know, it wasn't approved and that it was, you know, a procedural kind of thing and that it wasn't part of the policy. That was their position. As I say, I wasn't about to get into a confrontation with these guys.

MR. ARMSTRONG:

Q. Well, why is that?

THE COMMISSIONER: You were the senior officer of the federation, then?

THE WITNESS: No, I wasn't. I was simply there as a consultant to carry out a part of the program. I no longer was an employee of the Association.

THE COMMISSIONER: Oh, I see. Right. Well, who was there representing the Association at that

time?

THE WITNESS: Gerard Mach was the only full-time employee -- well, national office employee of the Association that was there.

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THE COMMISSIONER: Who was that?

THE WITNESS: Gerard Mach. Charlie Francis was a full-time employee of the Association as well.

MR. ARMSTRONG:

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Q. Well, what's the difference between being a full-time employee with certain responsibilities and a consultant retained on a project basis, as you were, with the job of implementing a doping control -- formulating a doping control program and implementing it? I mean, it was your responsibility, was it not, at that time? I mean that's why we called you as a witness, because of your responsibility at that time.

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A. It was my responsibility to carry out the program on the direction of the domestic program manager, domestic competitions manager, but I'm not about to get myself in a physical confrontation with guys that are bigger than I am in a situation -- I mean, there just isn't any point to it. I've got, you know --

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THE COMMISSIONER: Was McKinty there at the time?

THE WITNESS: No, he was not there.

THE COMMISSIONER: And you reported this to him, and that's why he responded this way, I gather?

THE WITNESS: That's correct.

5

MR. ARMSTRONG:

Q. It must, I suggest to you, have occurred to you at that time that the sprint coaches were not opposed to out-of-competition testing on some sort of policy or philosophical basis; they were opposed to out-of-competition testing because they were afraid their athletes would be caught and tested positive? That must have occurred to you?

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A. Yes, obviously -- well, I wouldn't say obviously. I mean, we all recognized the fact, and had for a number of years, that the only effective way of catching athletes, if that is the intent of the program is to catch people or to really effectively deter their use, is to do out-of-competition testing. That's why we proposed out-of-competition testing as early as 1982 as part of our policy.

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Q. I assume that you were not the only person who appreciated that? Others in the organization, on the Board, must have appreciated that the only effective way to deal with the problem was likely through

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an out-of-competition testing program?

A. Well, I know that certainly Dr. Doug Clement believed very strongly in an out-of-competition testing program as an effective way of deterring athletes from the use of performance-enhancing substances. I would not begin to speculate as to the volunteer members of the Board of Directors minds and their knowledge.

Q. All right. It was in September of 1985, according to the summary at the beginning of this book at page 7 that -- sorry -- at page 8, that Sport Canada revised it's doping control policy providing for a lifetime ban on federal government funding upon a positive test result for anabolic steroid use. So I take it that that ban didn't apply to Willers because he had been caught prior to the change?

A. That certainly was our interpretation of the situation, that Harold had tested positive in June of 1985 and that the policy was not retroactive. That was our interpretation of it.

I have some very strong personal misgivings at the time about that policy. I think it's very clear that I'm opposed to the use of performance-enhancing substances, but I felt that the policy was inconsistent to start with, that you could test positive for using a day-of-the-event stimulant which could be something simple

like an adrenaline or something to the extent of cocaine that could under normal circumstances land you in jail and get only a one-year ban from Sport Canada funding. You could use a pain killer like some form of analgesic that
5 could again result in a one-year ban even though heroin is, for example, an analgesic and you could get a one-year ban, and yet you use anabolic steroids and on the first and only time you've used it, you get a lifetime ban. So I felt the policy was inconsistent on that aspect.

10 I felt that it was going to be a very expensive policy because it virtually guaranteed that any athlete who ever tested positive after that policy was implemented would deny that they had used them. They would appeal the results of any finding; that it would
15 incur great expenses to the Association in terms of dealing with appeals, and it would also shut down any opportunity to get to the root of the problem. You weren't going to have athletes saying "Yeah, I used steroids and this is why I used them." They were just
20 going to say, "No, I never used steroids," and we've seen ample evidence of that.

25 Thirdly, I didn't feel it was really in keeping with natural justice in terms of the severity which was being imposed, which was basically a death penalty to an athlete. I felt that that wasn't fair.

Plus, there is the inconsistency of that penalty as compared to the penalties in sport in general, even within our own sport in terms of our international federation of a two-year ban for the first-time use. So I felt that the policy was unfair from that aspect.

Q. Could I ask you to turn to tab 12 of the book, Mr. MacWilliam. I understand that all of the material contained in tab 12 represents the development, as it were, of the 1986 doping control plan?

A. That's correct.

Q. If we look at Part III of the plan, at about the sixth or seventh page, again you set out the NSO plan for testing. In Part A, you deal with domestic competition, Part B with international competition, and Part C you're dealing with training camps in the fall of 1985 for a three, at this stage at least --

THE COMMISSIONER: Would this be for the year '86? This is a request for --

MR. ARMSTRONG: This is would be --

THE COMMISSIONER: It's dated July '85.

THE WITNESS: Actually there are two documents that are mixed together there, and I think that they are incorrectly sequenced. The first two pages really don't belong there. They belong with a subsequent document.

MR. ARMSTRONG: I see.

THE COMMISSIONER: Yes. I think you started off -- is this addressed to Mr. Sorensen from Mr. McKinty?

5 THE WITNESS: Yes. That's --

THE COMMISSIONER: That's the one we should start with.

THE WITNESS: That's February 25th, 1986, which was our annual policy.

10

MR. ARMSTRONG:

Q. I see. So this is your 1986 anti-doping program starting there?

A. Yes.

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Q. And then as of February '86, then the total tests requested for the '86-'87 fiscal year are 310 tests, all of which are in-competition tests, right?

A. Except 20.

THE COMMISSIONER: Except 20.

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MR. ARMSTRONG:

Q. Except 20 in the training camp?

A. That's right.

THE COMMISSIONER: So that was the fall of

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'85. I don't quite understand that. Had that been done?

THE WITNESS: No, that's a typographical error. It should be fall of '86.

THE COMMISSIONER: Thank you. So then you are proposing 310 tests for '86-'87. Have I got it right?

5 THE WITNESS: That's correct.

THE COMMISSIONER: Of which 20 would be in training camps and the rest would be in competition?

THE WITNESS: That's right.

THE COMMISSIONER: Thank you.

10 MR. ARMSTRONG:

Q. Then if we go to tab 13, as I understand it, there is documentation and correspondence related to your 1986 plan, and Mr. Sorensen in his letter
15 to you dated May 22nd, 1986 on the second page, says:

"I would like to meet with you at your earliest convenience to discuss the design of your proposed random testing program. Specifically, decisions are required on such
20 issues as event location, scheduling for random tests, notice procedures to all CTFA athletes and coaches on the intent to conduct random testing, selection procedures for athletes to be tested on random or
25 short-notice testing programs."

So do I understand it that here, really, is where the CTFA
for the first time in a serious way is starting to turn
its mind to the question of out-of-competition testing?

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A. Very definitely. A Sport Canada program was starting to press very hard to all sports to do out-of-competition testing, particularly those sports that had a history of or admitted to a problem of steroids within their sport. And track and field was one of those sports.

And the letter from Ole to Mr. Wedmann was saying "Listen, your plan is not particularly adequate and we want it beefed up. We want it extended." And that's the procedure that we then were proceeding to follow.

Q. And then in the next document you write a memo to Mr. McKinty, dated June 24, '86 in which in the first numbered paragraph you say:

"Sorensen expressed Sport Canada's concern about the CTFA's apparent lack of action in the area of random testing of carded athletes during the training periods and the failure to respond to his letter to Wilf Wedmann, dated 22 May, 1986."

And then further down in the paragraph numbered 3 you say:

"Denis Landry [who was an employee of the CTFA at the time] informed me on Friday, 20 June that the Sport Science Committee had recommended that the CTFA carry out random

testing during the off-season period and charged Dr. Doug Clement and myself with developing a program for such testing."

Correct?

5 A. That's correct.

Q. And so as a result of those

initiatives, the organization starts to work and starts developing an out of season or off-season anti-doping control program, which is set out in the document headed
10 Canadian Track and Field Association Off-Season Anti-Doping Control Program For Carded Athletes for the carding period October '86-September '87; is that correct?

A. That's correct.

Q. All right. The documents following
15 deal with that. And if I could just have your indulgence, I just lost my place for a moment.

That's really all I wanted to do with what is contained in tab 13 as to the genesis of that policy.

Now, as I understand it, after the policy
20 for out-of-competition testing is generated in the fall of 1986, it was put to the Board of Directors of the CTFA in September of '86; is that correct?

A. There was -- there was a motion to the Board in September of '86, but if I could just refer you
25 back, please --

Q. Yes.

A. -- and it is included in the submission at 1986 Anti-Doping Program Submission in tab 12 as Appendix 1. And it is to the submission to Sport Canada. We started out referring to the letter of mine of July 26, '85, regarding the updating of the CTFA policy on doping control. And then Appendix 1 is the updated policy that was ratified by the CTFA Board of Directors on the 8th of February, 1986.

THE COMMISSIONER: I see.

MR. ARMSTRONG:

Q. I am sorry, I have completely lost you here?

A. I can understand that.

THE COMMISSIONER: The 8th February '86 is that ratified by the Board? Is that what it is?

THE WITNESS: That is correct, Mr. Commissioner. It is this letter and it refers to this particular policy. That's in the middle of tab 12.

MR. ARMSTRONG:

Q. All right. I don't know if I have that.

A. Yes, you do.

Q. I see. All right. Yes. Fine.

A. What we started doing was in the summer of 1985, recognizing the fact that the policy of the Association had not been revised since 1982 when it was first set out and set out in very simply forms, we started looking at revising that policy.

And I did some work in the summer of '85. It was submitted as a draft, it was circulated, there was feedback received, and then a doping control policy was submitted to the Board given all that input and was approved on the 8th of February, 1986. And that's the Appendix 1.

And it restates what doping is. It restates the position statement of the Association, and then outlines the policy. And it very clearly, and part of this did come about out of the problems at the camp in Provo, no question of that. We wanted to make very certain that it was spelled out as part of our policy very clearly that out-of-competition testing was part of the CTFA program.

Q. All right. Can you help me in this document, Appendix 1, where do we find the reference to out-of-competition testing?

A. I know it is here. Okay. If you look at paragraph (e), sub paragraph 3.

Q. These paragraphs are numbered to start with.

MR. BOURQUE: Excuse me, the reference is making to paragraph 4.1(e)?

5 THE WITNESS: Thank you, Mr. Bourque.

MR. ARMSTRONG: 4.1.

THE COMMISSIONER: Well, perhaps we will take our morning break and we will be able to find it.

10 MR. ARMSTRONG: We have got it, so, can we take our break --

THE COMMISSIONER: No, no, we are liable to lose it, let's do it now.

MR. ARMSTRONG:

15 Q. Yes, okay. It is guaranteed. And that paragraph reads:

"Testing may be carried out on athletes described section (g) at any time during the year at the of the CTFA in accordance with an annual plan drawn up for testing at competitions and training sessions and submitted to Sport Canada."

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THE COMMISSIONER: All right.

MR. ARMSTRONG: Thank you.

25 THE COMMISSIONER: We will take our

break.

--- Short recess.

--- Upon resuming.

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THE COMMISSIONER: Mr. Armstrong.

MR. ARMSTRONG:

Q. All right. Then, Mr. MacWilliam, can

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I just take you to tab 15, because I think that we have to go there before we go to tab 14.

At tab 15 are excerpts from minutes of the

Board. And at the page numbered 5, which is the second page, there is a record of the Board discussion in

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September of 1986 about out-of-competition testing.

THE COMMISSIONER: Can I just go back a moment.

MR. ARMSTRONG: Yes.

THE COMMISSIONER: I notice that '86 you

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requested, I think, authorization for 20 out-of-competition testing. Is that what I saw last time?

THE WITNESS: That was the initial submission and Sport Canada came back and said that wasn't sufficient and we were to increase the number.

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THE COMMISSIONER: And so they said you

should increase the number. Then what happened? Am I ahead of my story?

THE WITNESS: We actually went back with the proposal for --

5 THE COMMISSIONER: Was there any actually out-of-competition testing in '86.

THE WITNESS: Not to my knowledge, no. At that time I had moved to Saskatoon in the fall of '86 and was no longer directly involved with the CTFA program in terms of the implementation of testing.

10

THE COMMISSIONER: So, that for the period of time you were there, there was no out-of-competition testing at all?

THE WITNESS: With the exception of the testing at the Provo camp, that's correct.

15

THE COMMISSIONER: Which you regarded as competition testing?

THE WITNESS: I regard it as out of competition. The coaches chose to regard it as in-competition testing.

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THE COMMISSIONER: You say fortunately there was a competition at Provo.

THE WITNESS: That's correct.

THE COMMISSIONER: Yes. All right. Go ahead, Mr. Armstrong.

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MR. ARMSTRONG:

Q. All right. And although the documents reveal in particular the reference that the Commissioner just referred to about testing at training camps in the
5 fall of '86, there was never again testing at a Canadian Track and Field Association training camp other than the one instance at Provo?

A. I believe that's correct. I don't have any knowledge of any other testing carried out.

10 Q. All right.

THE COMMISSIONER: I am sorry, I took you back. You were at tab 14, were you, Mr. Armstrong.

MR. ARMSTRONG:

15 Q. I was at tab 15 briefly. I just wanted to make sure I had the chronology correct that the Board then in September of '86 has before it a consideration of an out-of-competition testing program, am I right?

A. That's correct.

20 Q. And then as I understand what happens the decision is made to seek feedback from coaches, athletes, the Board, and the various branch organizations of the CTFA to the proposed out-of-competition testing program?

25 A. That's correct.

Q. And you see that by looking at tab 14, the memorandum of Wilf Wedmann, dated November 5, 1985, addressed to carded athletes and personal coaches. And he says:

5 "At the September meeting, our Directors gave extensive attention to the attached Doping Control Policy Revision Proposals. The Board concluded its deliberations by passing the following three motions."

10 And then there is the Motion 86.09.17:

"That Motion 86.09.16 be referred back to the committee to seek input from Branches, carded athletes, coaches, and the Board of Directors."

15 And why was that? I mean was the Board not in a position at that point in time to make a decision about out-of-competition testing and say here it is, let's go with it?

20 A. I was not a member of the Board and was not privy to their discussions, and I really couldn't comment on their reasons for deciding to bury it in committee.

25 Q. Well, let me ask you this: You had already had the experience in Provo, Utah in 1985 where the coaches, Charlie Francis et al, apparently with the

support of the head coach, Gerard Mach, had said they were opposed to out-of-competition testing and the only way they would accept testing at the Provo camp was that if it was done under the so-called heading of competition testing.

Does that experience not suggest that the Board decided that the only way that they could put out-of-competition testing into place was that if they got in fact the approval of the branches, the athletes, the coaches and so on?

A. Well, I would suggest that they had that approval. It was part of the policy that was accepted by the Board and circulated by the Board in February of 1986. And the Board action were all ratified at the annual general meeting which is where that kind of thing takes place. There was an annual general meeting --

THE COMMISSIONER: That was your view, but apparently that wasn't the view of the Board because they were seeking approval; is that fair?

THE WITNESS: Well, there was some. I can't speculate what the attitude of the Board was and why they decided to go that route, but --

THE COMMISSIONER: Well, reading the documentation it would seem to be still inconclusive at this stage?

THE WITNESS: There certainly seemed to be reluctance on the Board to take a hard stand, although they had already as far as I could see and my understanding of the operation of the Association, they had the approval of the membership to do that in that all the actions of the Board in the year '85 - '86 are ratified by the annual general meeting in the spring -- in the June of 1986.

So, the approval of the policy in February was ratified by the annual general meeting, which is the membership.

MR. ARMSTRONG:

Q. And indeed you must have been somewhat frustrated by all of this by the fall of 1986, were you not?

A. That's an understatement.

Q. And did you have occasion to have some discussion with any other representative of the Canadian Track and Field Association at that time about your frustration with the lack of action and the implementation of an out-of-competition testing program?

A. Well, I had just moved to Saskatoon, as I have indicated, to take up the position of administrator of the High Performance Center, but in September of 1986 I

was back to Ottawa on business and basically to help sort out some of the loose ends that I had left behind in Ottawa.

5 And I was in the Association offices one day and I don't know, and I don't have any record at this time whether that was prior to or following this Board meeting that is in tab 15 that we are referring to, but I had a discussion with Terry McKinty, the Manager of Domestic Programs. And I asked him where things were at in terms
10 of the out-of-competition testing. And he indicated to me that the testing program was going to go back to committees for further study, that we were already the leaders in the world and we were too far out in front of everybody else, and that we weren't going to put our
15 programs at risk. And the exchange got pretty heated because I was very frustrated. I felt my credibility and my work with the Sport Medicine Council and for Sport Canada was certainly in jeopardy, and that the work that we had done in terms of with Doug Clement and myself in
20 developing procedures for implementing out-of-competition testing, a committee or work that had been approved by committee of coaches in the sport, our Sports Science Committee, that all that was going for not, and that as I said the thing was being buried. And I was very
25 frustrated and very angry.

Q. Well, when he said that they, meaning the Canadian Track and Field Association, were not going to put their programs at risk, what he meant, I suggest, was they weren't going to put their athletes at risk?

5 A. I -- athletes, programs, you would have to ask Terry to interpret what he meant. But the terminology he used was "put programs at risk".

THE COMMISSIONER: What risk are you speaking of, Mr. Armstrong?

10 MR. ARMSTRONG: Well, that's what I am trying to get at with Mr. MacWilliam.

MR. ARMSTRONG:

15 Q. How you interpreted it, what he was saying was that they didn't want to lose their athletes through testing positive at an out-of-competition testing program?

20 A. That is a conclusion that you could draw from his statement, yes. But as I say, I don't know at that time whether he was speaking as an individual or whether he was speaking as the company - "company policy". And I think at that time he was expressing to me an individual view point. I am not sure whether it was the corporate view point.

25 Q. All right. It was only subsequently in

1989 that you had a conversation in which he suggested to you that maybe he was speaking individually, is that it?

A. Yes, but neither of us can recall whether or not the conversation took place before or after the Board meeting. If it was after the Board meeting, then it would reflect corporate policy. If it was before the Board meeting, it would be individual policy that obviously was at least to some extent could be considered obviously to be somewhat shared by some other people.

THE COMMISSIONER: That's the Board meeting of what date you are speaking of, '86?

THE WITNESS: September 1986. I don't have a date on the Board meeting here, but it was in September of 1986, late September.

THE COMMISSIONER: That was the Board meeting?

THE WITNESS: Yes.

THE COMMISSIONER: All right.

MR. ARMSTRONG:

Q. All right. Then did Mr. McKinty ever suggest to you that if you were concerned about the lack of action and the failure to implement the out-of-competition testing program that you should take the matter up with the then President and Chief Executive

Officer, Mr. Wedmann?

A. I don't recall if he specifically suggested that to me or not, although obviously that was an alternative that was available to me. I would suggest
5 that I had a very limited amount of time in which I was in Ottawa and had available to be in the CTFA offices --

THE COMMISSIONER: The work you are doing at the High Performance Center, what type of athletes were being trained there? Were they part of track and field?

10 THE WITNESS: Yes, only track and field athletes, Track and Field High Performance Center.

THE COMMISSIONER: So, you are still very much involved in the sport?

THE WITNESS: Very much so.

15 THE COMMISSIONER: And you were at that time?

THE WITNESS: Yes.

MR. ARMSTRONG:

20 Q. In any event, did you indeed take the issue up at that time with anybody other than Mr. McKinty? Did you go to talk about it with Wedmann or the Chairman of the Board or any other person in a position of authority?

25 A. I really don't recall whether I talked

to Wilf at that time or not. It is quite possible that I did and in terms of where things were going with the whole program. But I am -- I am not -- I can't recall for certain whether or not I talked to him. It obviously
5 wasn't as dramatic a conversation as the one I had with McKinty because it doesn't stick in my mind.

Q. Then finally I wanted to ask you a question about the documents that appear at tab 16 which is a reference to the 1987 - '88 anti-doping plan. Now,
10 is this a plan that was in the process of development before you went out to Saskatchewan?

A. No, I had really no input into the development of that plan.

In the fall of 1986 I received a memo from
15 Mr. McKinty informing me that he would be undertaking -- any -- my activity would be restricted simply to he would call me if he wanted some advice, but he was going to undertake all the policy and planning for that area.

THE COMMISSIONER: What date is this
20 document, do you know, Mr. Armstrong? I notice it says individual off-season testing is pending Board of Directors' approval. So, apparently it had not been approved at that date.

MR. ARMSTRONG: That's correct. I don't
25 know. Perhaps --

THE COMMISSIONER: All right. We will find out later.

MR. ARMSTRONG: Mr. Savage is our next witness, and if he doesn't have the answer, I am sure Mr. Bourque can assist us in finding out.

THE WITNESS: I would suggest, sir, as this is part of the annual plan that would be submitted to Sport Canada that it would either be December or January of 1987 - '88.

THE COMMISSIONER: Thank you.

THE WITNESS: '86 - '87 that it would have been submitted to Sport Canada.

MR. ARMSTRONG:

Q. All right. Then we know from other evidence that I believe we have heard, and also from tab 17, although you were no longer directly involved, that a decision was made for a group to attend the World Symposium on Doping in Track and Field in Florence.

THE COMMISSIONER: To be held in May 1987.

MR. ARMSTRONG:

Q. And that's in May, 1987. And were you part of the delegation to go to Florence?

A. No, I wasn't. I had expected to be and

the discussions with Mr. Wedmann and myself, Mr. Wade was the staff person who really assumed the responsibility for the carrying out of the testing program, all the discussions with them had been that I would be attending that conference. And then at the Board meeting in April of '87, the decision was made that Mr. Savage and Mr. Wade and Dr. Clement would be the representatives to Canada and I would not be attending.

And that basically was the straw that broke the camel's back as far as I was concerned with my involvement. I had been working very, you know, very diligently in this field since 1980 on behalf of the Association and this was the first major international conference. I felt very strongly that the knowledge that I had in terms of the system that we had developed in Canada, and the work that I had done warranted that I be one of the people go to this symposium.

And I took it as a slap in the face when I was dropped from the list of those attending. And at that point, I severed my connection with the CTFA anti-doping program.

Q. Then, Mr. MacWilliam, you may not be able to help me with this, but if you could go back to tab 16 and the 1987 - '88 doping program at the -- there is a page that has at the bottom of the page Athletes' Council,

Anti-Doping Meeting, item number 7. These pages aren't numbered.

A. Yes.

Q. Now, there is a cost item of \$4,230.00
5 for that item. Presumably that would be the typical kind of thing that the organization would request assistance for in submitting their doping control program to Sport Canada, am I right?

A. Yes, it is.

10 Q. Now, there was to be an Athletes' Council meeting on the subject of doping control in Vancouver on June the 9th, and was this a typical kind of thing that might happen each year or was this unique to the year 1987?

15 A. That certainly was the first time that we -- this, to my knowledge, we called a specific meeting of the Athletes' Council to discuss the anti-doping situation.

20 Q. All right. And the Athletes' Council, was it something that was already in existence to deal with athletes' concerns, or was it in existence to deal with doping control matters?

25 A. No. The Athletes' Council was set up to deal with athletes' concerns, and just one of the concerns would be anti-doping. And this, as I say, was

the first time, to my knowledge, that they were call together specifically to discuss that subject.

The normal kinds of things that the Athletes' Council would meet to discuss were concerns regarding uniforms, the design of the uniforms, the fit of the uniforms, the quantity and supply, the disciplinary policy, the Red Book, the kind of things that the Red Book lays out. And the Council had been discussing those over the years.

Q. All right. However, this meeting as indicated was a meeting to obtain athlete perspective on CTFA anti-doping policy?

A. That's the stated policy. As I say, I was not involved in that in any way.

THE COMMISSIONER: Did it take place, do you know?

MR. ARMSTRONG:

Q. Do you know did it take place? I was going to ask Mr. Savage that question.

A. He would be the only one that could answer that.

THE COMMISSIONER: All right. Thank you.

MR. ARMSTRONG:

Q. Then, finally, were you ever given any reason as to why you were dropped from the delegation to attend the international conference in Florence in the spring of 1987?

A. I had discussions with both Mr. Wedmann and Mr. Ouellette and it was indicated that they felt that they wanted a Board member involved because they felt the Board needed to be better informed about the kinds of things that were going on. And that was the reason for adding Mr. Savage to the team that was going.

They wanted the staff member involved who was responsible. Mr. Wade had just joined the staff and they wanted him to have that kind of exposure. And Dr. Clement had been the national team doctor for a number of years and was involved in the program, and they wanted him involved.

Q. Going back to the conversation that you had with Mr. McKinty in the fall of 1986, you thought in September, where did that conversation take place?

A. That took place in the CTFA offices on River Road.

Q. Was there anybody else present?

A. I don't recall whether there was anybody else in the office with us or not.

Q. All right. Did Mr. McKinty share an office with anybody else at that time?

A. I don't remember whether Mr. Wade had started at that time. If he had, then his desk was also
5 in the same office space as Mr. McKinty's is, but I honestly can't recall whether or not he was there or in the employ of the CTFA at that time. I think he was, but I certainly can't recall whether he was physically in the office space at the time the discussion took place.

10 Q. Did you make any record of that meeting at all?

A. No, I didn't.

Q. To your recollection did Mr. McKinty make any record of that conversation?

15 A. If he did, I didn't have any correspondence.

THE COMMISSIONER: Well, you have discussed it with him since because you then --

20 THE WITNESS: Yes. It was a conversation because of my frustration about the thing and because of the intensity of the conversation it certainly stuck in my mind. And this spring I had occasion to be at a meeting with Terry and we talked about it.

25 And I said to him, did he remember the conversation. And he said, "Yes, he did." And I said

"Were you speaking as the, you know, was that corporate policy or was that your personal opinion?" And he said, "Well, I think, you know, it was just the way I felt at that time. It was my personal opinion."

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THE COMMISSIONER: But you couldn't fix the date at that stage?

THE WITNESS: Neither of us could fix the date, no.

5 MR. ARMSTRONG: Those are all of the questions I have. Thank you, Mr. Commissioner. Thank you, Mr. MacWilliam.

THE COMMISSIONER: Mr. DePencier?

10 MR. BOURQUE: May I just have a moment's indulgence with Mr. Armstrong?

THE COMMISSIONER: Sure.

MR. BOURQUE: Thank you, sir.

MR. ARMSTRONG: Could I just have your indulgence to ask one more question?

15 THE COMMISSIONER: Yes.

MR. ARMSTRONG:

20 Q. Mr. Bourque has asked me to put to you what Mr. McKinty may say if he's available to be called, and that is, in respect of this conversation which you believe to have taken place in September of 1986, Mr. McKinty may say, if he's available to be called and is called, that he responded to your display of unhappiness about the inaction over the introduction of an
25 out-of-competition testing program by saying that as far

as he was concerned, he had never received direction to implement such a program, and that to his knowledge, the details of the procedures were not in place to go about the introduction of the program. Do you recall his having
5 said anything like that at that time?

A. No, I can't remember whether he said that or not. If he did, I think the record shows very clearly that the procedures that Dr. Clement and I had been asked to design in fact had been designed and were in
10 his hands.

THE COMMISSIONER: Thank you.

MR. ARMSTRONG: Thank you.

THE COMMISSIONER: Mr. Bourque will go first. Go ahead, Mr. Bourque.

15 --- EXAMINATION BY MR. BOURQUE:

Q. Mr. MacWilliam, I'd like to ask you to address an aspect of the Canadian Track and Field Association's doping program during your tenure with the
20 Association that we haven't raised too much, and that is the educational aspect. I'd like you to tell the Commissioner how in your view that formed part of the rationale for in-competition testing?

A. Well, one of the things that we were
25 trying to do, one of the things we were trying to do about

our testing program, to start with, was to prepare our athletes for international competition. We recognized that it was a fact of international competition that testing was being done and that basically the only grounds
5 for appeal for a positive test were the fact that the test had not been carried out properly. So one of the things that we were endeavoring to do, as I indicated earlier, with our standard operating procedures was to make sure that it followed and was acceptable by the international
10 associations in terms of the principles that we established for doing testing. The other thing that we were trying to do was to make certain, anytime that we carried out testing, that the athletes understood the process so that if they were being tested at an
15 international competition, whether it be in Bogota, Columbia, or in Helsinki, or wherever, that they would know if the procedure was not being carried out properly and that they could take that opportunity at that time to protest the carrying out of the procedure so that if there
20 was a positive test come back, they would at least have on record the fact that the test had not been properly carried out.

It's a standard part of any testing
procedure that takes place that the athlete sign at the
25 end of passing the sample and the sample is packaged and

everything else, that the athlete sign a document indicating that the procedure has been properly carried out. Invariably, the athletes do that and then when they have a positive test, they come back and they protest the procedure. So we wanted to make certain that our athletes understood the procedure and that they understood that if there were a problem with the way the test was carried out, that they protested at the time, not wait until for whatever reason conceivable that they got a positive test and then to say, "Oh, wait a minute; it really wasn't done properly." So that was a big factor -- not a big factor but that was certainly a factor that we tried to stress in our doping control program. It was also part of our educational program.

Q. In addition, can you tell the Commissioner whether the CTFA at any time worked with other organizations in Canada with a view to educating other athletes?

A. Well, we --

THE COMMISSIONER: Educating them about what, though, Mr. Bourque?

MR. BOURQUE: Dope testing. I'm sorry.

THE COMMISSIONER: About the process?

MR. BOURQUE: Yes.

THE WITNESS: Basically, our standard

operating procedures became adopted by the Sports Medicine Council in January of 1984 as the standard operating procedure to be used for other sports organizations, and I assisted in terms of helping other organizations set up
5 some testing programs and carry out testing while I was still employed by the CTFA, and then in the hiatus of the summer of '84 to the summer of '86 when I was doing some freelance consulting work, continued to work with other sports organizations in how to set up programs, as well as
10 doing the doping education seminars.

THE COMMISSIONER: What was the audio-visual presentation which you were going to show in Provo which you weren't allowed to do?

THE WITNESS: It was the slide show that
15 had been developed by the Sports Medicine Council, the Committee on Doping in Amateur Sport, which is basically the same slide show that we use today in terms of explaining to the athletes the Sport Canada position, the individual sport position, the health risks involved and
20 these kinds of things.

MR. BOURQUE:

Q. In addition, I notice from your resume and in your evidence that it was part of your job function
25 to publish the Track and Field Journal, which was the

magazine of the Canadian Track and Field Association. Did you use that publication in an attempt to educate members of the Canadian Track and Field Association about banned substances, their use and testing for them?

5 A. Yes, we certainly did. We started that in 1982. I think the first record in the Track and Field Journal was an editorial I did in May of 1982 which again was arising out of some frustration at the lack of direction by Sport Canada and the lack of a clear policy applicable to all sport. Following that, there were
10 articles and editorials over the next four to five years on a regular basis on the whole subject. I think they are included in the tabs at the back of the binder, item 260.

 Q. Yes. I wonder if you would refer to
15 Exhibit 260, and more particularly tabs 18 through 23, and tell the Commissioner whether those articles represent efforts on the part of the CTFA to promote education of their members with respect to doping and dope testing?

 A. Well, we did -- as I say, there was an
20 article or an editorial by myself in May of '82, and then in August of 1982 -- and I would stress this is 1982, a year before Caracas -- we outlined the policy that had been approved at the annual general meeting in the editorial section and published the policy in detail and
25 then started publishing articles regarding the use of

anabolic steroids and this kind of thing. At the same time, we also published a position statement by the Ontario Medical Association's sports medicine section on the use of steroids.

5 That continues on. December '83, another editorial and summary of the year and more articles on doping, including an article by Ms. Hoffman and then the position paper of Sport Canada, and continuing on over the years following that, again February of '84, May of '84,
10 and then winter of '86.

 Q. Now I'd like to refer you to tab 10 of Exhibit 260, and these are the documents concerning the 1985 doping plan of the CTFA and, more particularly, testing at training camps. I would refer you to the
15 document dated May 14th, 1985, from Terry McKinty to Gerard Mach.

 THE COMMISSIONER: What date, Mr. Bourque?

 MR. BOURQUE: Which is the fourth document in, Mr. Commissioner. It's dated May 14th, 1985.

20 THE COMMISSIONER: Thank you.

 MR. BOURQUE:

 Q. The document speaks for itself. I suggest to you it's Mr. McKinty notifying Mr. Mach that
25 doping control testing will be carried out at the sprint

and hurdles camp in Provo, Utah. Do you recall when that camp was held? This notice is dated May 14th, 1985.

A. It was about a week later.

5 Q. And so far as you are aware, was notice of that testing given to anybody, any other coach, rather, besides Mr. Mach?

THE COMMISSIONER: Well, it says:

10 "As was published in Athletics Canada, we will be administering doping control tests at the sprint/hurdles training camp in Provo, Utah."

MR. BOURQUE:

15 Q. Well, let me ask you, then. Athletics Canada consists -- what is published in Athletics Canada?

20 A. I don't know what Terry had published in Athletics Canada. Athletics Canada was a two-fold newsletter that we would distribute to athletes and coaches, and I don't recall what actually went out in that in terms of --

THE COMMISSIONER: Well, it says, "As was published in Athletics Canada, we will be administering doping control tests at the...training camp in Provo, Utah." That had already been done before May 14th, '85.

MR. BOURQUE:

Q. On what basis did Athletics Canada come out? On what basis was it published?

5 A. It was supposed to be a monthly publication, but it frequently ran a little bit late due to production problems, and I'm not sure when the information would have been included regarding the testing that was planned there.

10 Q. Let me put the question to you this way. When you arrived at the camp in Provo, to your observation, were the coaches with whom you spoke there, did they appear to you to be knowledgeable that testing was going to be carried out?

15 A. By the time I arrived, they were certainly aware that I was coming and that the purpose of my being there was to carry out testing. How much in advance of that they knew, I have no idea.

20 Q. Thank you. With respect to the educational portion of the program, did you receive any feedback, not from the coaches, but from the athletes as to their willingness to participate in that?

25 A. I didn't receive any direct feedback from the athletes. The information I received was from the camp manager that the athletes weren't interested or

prepared to attend.

Q. Thank you. If I may take you to 1984, I'd like to ask you if you're aware of an incident in which two Canadian throwers were being sought out by the CTFA to be tested prior to departing for the 1984 Olympics in Los Angeles. Are you aware of such an incident?

A. Well in 1984, of course the Olympic year, our Canadian championships, which were also our final selection meet for the Olympic Games, were held in Winnipeg. Two athletes who were named to the team had not been in Winnipeg for the competition. However, they were head and shoulders above the rest of the field and were named to the team despite the fact of not having been at the selection competition. The decision of the Association was because they had not been there, and therefore not subjected to the chance of random selection testing, that they would be tested before they went to Los Angeles.

One athlete was tested at a competition in Vancouver. The other athlete was still at a training situation in California, and that athlete, when the training camp was put together just prior to the -- the team training camp came together prior to the Olympics, that athlete was then flown back to Montreal to provide a urine sample and to be tested at the lab and then returned

to Los Angeles to compete.

Q. With respect to both of those athletes, then, do I understand correctly that the testing of them did not occur at a competition?

5 A. Very clearly in the case of the athlete who was sent -- not sent home, but home from California -- they were up in Santa Barbara, or someplace. That was non-competition. I think the other athlete was tested following the -- in conjunction with the Harry Jerome
10 meet, but I'm not sure of that at this time. But it wasn't a case of a random selection. The athlete was identified and tested.

Q. And it's rather obvious, but I take it that neither of them tested positive?

15 A. That's correct.

Q. How long did it take you, beyond the trials in Winnipeg, to locate and test these individuals?

A. Oh, I think the second athlete, the one in California, basically it was the better part of a month
20 before that athlete was tested. It wasn't a question of locating him; it was just making sure that everybody was in the same place at the same time. The athlete who was tested in Vancouver, I think, was tested within two weeks of the championships.

25 Q. Now, we have heard much here in the

evidence about rumors of steroid use over the years, and I want to ask you if in your connection with the CTFA doping program you had heard rumors, and if so, what kinds and how frequently?

5 A. Well, I think we heard rumors of athletes either regarding their sexual preference or their use of drugs, be it recreational or performance enhancing, on a regular basis at virtually every international, national level athletes, not just Canadian athletes, but
10 international athletes. It reached the point where you dealt with the facts that you knew, and you couldn't simply just chase every rumor that came along.

 Track and field is an individual sport. It is a very measurable sport, and athletes are always
15 looking for reasons and justifications for their performances not measuring up to those of their peers and trying to rationalize things. It's much easier to use an excuse that the other person is doing something, rather than for an athlete to admit their own inadequacies,
20 whether it's inadequate coaching, whether it's inadequate work in terms of their training, or whether it's just the simple fact that genetically they are not endowed with the same capabilities as their fellow competitors.

 We simply couldn't chase every rumor that
25 came along because there were just so many rumors, as I

say, about virtually anything going.

MR. BOURQUE: Thank you. I have no further questions, Mr. Commissioner.

THE COMMISSIONER: Thank you, Mr. Bourque.
5 Mr. Freedman?

MR. FREEDMAN: Thank you. Mr.
Commissioner.

--- EXAMINATION BY MR. FREEDMAN:

10 Q. Mr. MacWilliam, my name is Jeremy
Freedman. I represent Wilf Wedmann.

Just so I have the timing clear, the Provo
training camp was in May of 1985, I believe?

A. That's correct.

15 Q. And that was before Mr. Wedmann took up
his position as general manager in July of that year?

A. Yes, it was.

Q. Now, Mr. Armstrong took you to tab 12
of your exhibit book and specifically Appendix 1, which
20 was the policy that you prepared in February of 1986.
That was the policy that introduced, for the first time,
out-of-competition testing. Now, as I understand it, Mr.
Wedmann had some input into formulating that policy with
you?

25 A. Very definitely. We worked together in

terms of --

THE COMMISSIONER: Well, it wasn't implemented. You used the wrong word. It was --

MR. FREEDMAN: Sorry. Into drafting this
5 policy.

THE COMMISSIONER: Yes.

THE WITNESS: I did a draft in July of '85,
and that was circulated to a wide variety of people. They
gave me feedback, and certainly over the course of time
10 between the end of July and January, February when the
final draft was prepared for submission to the Board and
circulation to the Board, I had conversations with Mr.
Wedmann about it, and he had input into what I prepared,
and we had gone over it together.

15 MR. FREEDMAN:

Q. And you would agree with me that he
contributed to its development?

A. He certainly -- he and the other
20 people. Wilf definitely had input and helped me with it.
Some of other people didn't respond. They just said,
"That's fine," or didn't respond at all. But, you know,
we discussed it on many occasions or on several occasions
and came up with the policy; because he was the one, as
25 the general manager of the Association, who actually

circulated it to the Board and presented it to the Board.

Q. It's fair to say that he was in favour of this policy draft?

A. I would think so.

5 Q. You talked about how in September you were frustrated because the Board did not adopt the policy at that time. Can I ask you whether you were aware at the September Board meeting that Mr. Wedmann had introduced the policy and sought its immediate implementation? Were
10 you aware of that?

A. I wasn't aware at the time that that's what had happened.

Q. If I can ask you to turn up the policy just so there is no confusion on the point.

15 THE COMMISSIONER: What tab are you at now?

MR. FREEDMAN: This is at tab 12, Mr. Commissioner -- sorry, tab 14. It's about six pages in from the end, seven pages in from the end. It's a Canadian Track and Field Association Board action request.
20 This was what was put before the Board in September at its meeting.

MR. FREEDMAN:

Q. In paragraph 1.1 -- and this was
25 prepared by Mr. Wedmann, Mr. McKinty and yourself, Mr.

MacWilliam?

A. That's right.

Q. In paragraph 1.1, it was moved that the Board of Directors approve the policy procedures at the September meeting. Is that your understanding on your reading of this?

THE COMMISSIONER: I'm sorry. Moved that the Board of Directors approve the amendment. Is that what you're talking about?

MR. FREEDMAN: Yes, to include paragraph 4.1(e) which is the out-of-competition testing. This is what Mr. Wedmann presented to the Board in September.

THE COMMISSIONER: Well, Mr. MacWilliam thought this had already been approved.

MR. FREEDMAN: Not the policy that was presented in September.

THE WITNESS: The policy had been approved in February, and this was basically an amendment to that policy in that one paragraph --

THE COMMISSIONER: I see.

THE WITNESS: -- to spell out far more clearly and in much greater detail exactly what off-season training testing involved.

THE COMMISSIONER: I see.

MR. FREEDMAN: Precisely.

MR. FREEDMAN:

Q. And if you turn the page to the last
page of that 6.0, which is two pages over, it was
5 presented for immediate implementation, wasn't it?

A. Yes, it was.

Q. And when you told Mr. Armstrong that
you couldn't recall whether after the Board meeting you
had a discussion with Mr. Wedmann about your frustrations,
10 can I suggest to you that one of the reasons you may not
have had that discussion was because Mr. Wedmann himself
had sought its immediate implementation, so he wasn't the
person really to complain to?

A. As I say, I can't recall at what time
15 the discussions took place, whether it was before or after
the Board meeting.

MR. FREEDMAN: Those are all my questions.
Thank you.

THE COMMISSIONER: Any other counsel? Mr.
20 DePencier.

--- EXAMINATION BY MR. DePENCIER:

Q. Mr. MacWilliam, my name is Joseph
DePencier, and I represent Sport Canada and the federal
25 government.

Sir, I think from your evidence it's quite clear that through your work and your publications you have, to understate it, a very well-known, philosophical objection to doping?

5 A. I hope that's clear.

Q. It's quite clear that you've been a leading advocate for effective anti-doping in track and field, and you've spent years working in one capacity or another to that end?

10 A. Thank you.

THE COMMISSIONER: Was that a question?

MR. DePENCIER: I'm just asking him to agree with that, sir.

15 THE COMMISSIONER: You don't think he'd disagree with that question?

MR. DePENCIER: I hope not.

THE WITNESS: I'm waiting for the other shoe to drop. It just sounds too good to be true.

20 THE COMMISSIONER: Be careful, Mr. MacWilliam. Be careful.

MR. DePENCIER:

25 Q. I think you would agree that it's fair in the enforcement of its own rules, it's fair for sports organizations to use their own personnel and their own

resources to combat anti-doping to the extent that they can?

THE COMMISSIONER: He agreed it was their initial responsibility to do so.

5 THE WITNESS: Yes. I would concur with what the Commissioner said, however I felt and I have always felt and I've had this discussion with members of Sport Canada going back into 1980-'81, that I feel that because of the nature of sport in Canada with the carding system that we have of national assistance being provided
10 to athletes through Sport Canada, that there really is an onus on Sport Canada and the federal government to take a strong position and to assist sports in the carrying out of the program.

15 I feel that while it's all well and good for organizations to police themselves and that there is certainly a desire of organizations to police themselves, it is a situation very much that can put an organization at conflict with its own members, and that it would be of great -- and also leave the Association open to charges
20 that it has either persecuted certain individuals or it has protected certain individuals.

I've always felt that it would be a great advantage to sport in Canada that there be an outside
25 organization that would take on the responsibility for

carrying out the testing program so that there could be no charges against sports that they were not doing their job, that they were protecting individuals from being tested, or that there was anything untoward going on.

5 I pushed for that -- I started pushing for that in -- well, going back to 1980-1981 when Mr. Elliot was writing to Sport Canada. I concurred with him at that time, and when we started with the Committee on Doping in Amateur Sport in 1983, my position from the outset there
10 was that it would be a much better thing for Canadian sport if there was an outside, independent organization that was responsible for carrying out testing.

 Q. Absolutely, and I think you would agree that to this day, Sport Canada and the Sports Medicine
15 Council or other organizations have a continuing and legitimate role in that regard?

 A. I would like to see a much greater role, and I understand in the past few months that there seems to be the fact that that role will be expanded and
20 that there will be that kind of assistance. I think the kinds of things we have seen between 1983 and 1988 in terms of the onus still being on the sports to carrying out their own testing procedures, the appeals that have gone on, the appeals that have been upheld on the basis of
25 testing programs not carried out correctly, have all lent

added credence to my position that really we need a national organization outside of the individual sports that is responsible for carrying out that so that there is consistency and continuity in the program and that there can be no charges of bias.

THE COMMISSIONER: That would mean that the sport federation would be relieved of all that responsibility?

THE WITNESS: No, it wouldn't mean that the sport federation would be relieved of all responsibility, but that it would have that kind of assistance. Particularly for the out-of-competition testing, I think that the sport federation should be still involved in ensuring that its athletes are tested at competitions and that their names are in the pool to be drawn for out-of-competition testing, and that the outside organization is informed as to where they can find athletes if they're drawn to be tested, and this kind of thing, but that it be an outside organization that actually carries out the testing program.

Q. You're really speaking here, as I understand it, about the mechanics of the testing from the time that samples are collected, through the analysis, to the informing of people of what the results are?

A. No, I'm not speaking of that. I'm

speaking of setting up the testing stations and overseeing the carrying out of the testing, not starting from when the test has been collected.

5 Q. But I gather from your own work, and you would agree, that it's important that an organization like the CTFA have a policy in place that can make use of that testing system?

A. Oh, very definitely, and that's what we've pushed for for years, is to have that policy.

10 Q. In fact, I think you've described that in the early days, back in 1982 or '83, as you got started in testing, you were constantly refining your first policy, working out the glitches, as it were, as you gained some experience in this field?

15 A. That's very true, yes.

20

25

A. That is very true, yes.

Q. Now, I take it that as far as the costs of anti-doping as a whole, that a large portion of the cost is really the testing itself, isn't it?

5 A. In terms of in-competition testing the major cost is the test -- is the test analysis, very definitely.

I think if we start to talk about out-of-competition testing however there are a lot of other costs and that includes the travel of somebody to
10 wherever the athlete happens to be to oversee the testing sample. And you then start to get dramatically increased costs, costs which I think we grossly underestimated when we first got started and trying to do the program back in
15 '82-'83.

Q. I take it then as far as establishing a policy itself and taking a philosophical stance to move to testing, that's not the costly part of the job. It is actually getting the testing done once you have the policy
20 in place that costs the real money, isn't it?

A. In terms of dollar cost, yes.

Q. And in fact you started, I believe you said that very early on your testing program for the sum of some thousands of dollars when you were first putting
25 your policy in place and doing your first rounds of

testing out of your own pocket, out of the CTFA's pocket?

A. Yes, we have to make sure whose pocket we are picking here. Yes.

Q. In fact, you had started this
5 in-competition testing with CTFA funds without the support of Sports Canada funding?

A. That's correct.

THE COMMISSIONER: Well, that's not quite
10 right. It is with the support of Sport Canada funding, not additional allocation?

THE WITNESS: Actually in 1981 when we first tested in Regina, there was no Sport Canada money used. That was CTFA funds.

THE COMMISSIONER: Where do the CTFA funds
15 come from?

THE WITNESS: The funds for that year would have come from membership or fundraising --

THE COMMISSIONER: Well, how much of your budget was being funded by the Government in those days?

THE WITNESS: I think that the percentage of
20 our budget at that time was somewhere in the neighborhood of 70, 75 percent possibly, but --

THE COMMISSIONER: So, the bulk of the money for the operation of the CTFA was coming from the
25 Government?

THE WITNESS: Yes, it was, sir, but it was line items. They were specifically allocated items and we were not given permission to use any of the Sport Canada funds for that testing, and the cost of the testing came out of the CTFA self-generated revenue.

THE COMMISSIONER: That's a way of bookkeeping. Without those funds, the rest of the money from CTFA generated would have to go to other costs?

THE WITNESS: Yes.

THE COMMISSIONER: All right.

MR. DePENCIER:

Q. Now, that leads me to ask you a couple of questions about 1983. I think you indicated that in the previous year you had for the first time received some money from Sport Canada which was earmarked specifically for anti-doping testing?

A. Yes, it came through our budget as a line item from Sport Canada.

Q. And that in 1983 you sought, but did not secure, a similar earmarked sum of money?

A. That's correct.

Q. However, for that 1983 testing year, whether it is a calendar year or a financial year, you received the majority of your funds from Sport Canada that

year?

A. I believe we were still in that situation, yes.

Q. And do I understand your evidence to be
5 that in response to requests for specifically allocated funds for testing, Sport Canada said we can't give you that money, but you are free to use whatever portions of the larger --

THE COMMISSIONER: No, he asked them for
10 about \$13,200.00, Sports Canada said we will give you \$10,000.00, you can use some of the other money for that purpose.

THE WITNESS: The 13,000 that we asked for
15 was after the fact, but this was in our budget submission in December of 1982.

THE COMMISSIONER: That's when the letter
came back offering you \$10,000.00 plus saying you may have the surplus fund; isn't that right?

THE WITNESS: Yes, sir, that's correct, but
20 the -- we are talking, and it gets confusing, because we are talking fiscal years and the fiscal year --

THE COMMISSIONER: I am talking about
dollars. You are asking 13,200, they offered you ten?

THE WITNESS: That wasn't our budget
25 submission. Our budget submission went in December of

1982, and I don't have the figures here that we requested, but we made a submission to Sport Canada in December of 1982 for the fiscal year 1983 - '84 commencing the 1st of April in 1983.

5 We got a response back some time in early 1983, hopefully we got it back in March although that would be an unusual occurrence, it was probably more like the middle of April to the end of April as to what funds Sport Canada was approving for us for the year.

10 And at that time, Sport Canada came back and said there is no line item for doping control; however, you are free to use out of your national team block funding those funds to doping control if you wish to make that a priority.

15 The request for the 13,000 came in September of 1983 in response to the letter from Bill Heikkila who had come back to us after the fiasco in Caracas and after the time that Sport Canada had decided that they had to appear to be involved in doping control programs and that
20 they were willing to get involved in doping control programs.

 And they came back to us and said, yes, we will approve, we will support your anti-doping program, tell us how much you have already spent, tell us how much
25 you want to spend for the remainder of the fiscal year,

but it was after the fact --

THE COMMISSIONER: I know.

THE WITNESS: -- coming through.

THE COMMISSIONER: All right.

5

MR. DePENCIER:

Q. So, just dealing with the first -- as I understand, you have got some events that occur before Caracas --

10

A. Yes.

Q. -- and the Sport Canada policy and some --

A. Yes.

Q. -- events that occur after?

15

A. That's right.

Q. Dealing with the events before, you were, I think as you put it, told that if you wanted to change, change the way you spent the national team block funding, to use some of that money for anti-doping, that was up to you to do?

20

A. That was up internally within the sport to make that decision, that's correct.

Q. I suppose it was up to you -- up to the CTFA to make the decisions and decide which were the higher priorities?

25

A. That's correct. We were given the flexibility within the block of funding to allocate those funds for that purpose should we so desire, and we did make that decision.

5 Q. That you did in fact allocate some of those funds --

A. We did allocate some funding. We reduced what we had planned to do, and carried out the testing on a reduced basis because, as I say, when, you
10 know, the pie is only so big and it has to be cut so many ways and the fight was internally as to, you know, how do you cut the piece of pie when it comes back.

And the decision to spend money on doping control would mean that many fewer athletes who would have
15 the opportunity of a European competition experience or whatever, you know, the plan was for the year.

So, it was an internal decision. And the national team program block was basically under the control of the Head Coach and National Program Director,
20 Gerard Mach. And so that it was a question of how much of the funding that was allocated to the program block, which was never enough money in Gerard's opinion, it was always considerable less than the \$4 million he asked for every year, that we would have to, you know, make the
25 negotiation internally as to what money could be allocated

for doping control.

Q. I take it in face of those hard financial crisis you saw anti-doping as a priority and worth diverting funds from other worthwhile programs--

5 THE COMMISSIONER: Not a very high priority because they reduced the amount to spend so they could use it for other purposes.

10 THE WITNESS: Well, it depends on whose priority you are talking about, whether you are talking about my personal priority as I saw things and how things --

THE COMMISSIONER: What was actually done did not put doping control in the high priority relative to the rest of the expenditure, obviously.

15 THE WITNESS: Obviously.

MR. DePENCIER:

20 Q. Now, I think that you said with respect to the in-competition policy that it took many months to refine it. I think you mentioned a figure of 13 to 14 months in the early days during which you worked on the policy and refined it to get it in to shape; is that correct?

25 A. We started working on it -- well, we took the experiences that we had in 1981 in Regina, when

we started to try to do doping control in 1982 at the Canadian Championships Commonwealth Games trials. We -- to put the thing in context. Originally that competition was supposed to take place in Sudbury. Sudbury had some
5 problems with the track. They pulled out at sort of the last minute at the end of April -- the end of March, early April. We decided to -- a group got together in Ottawa and said that they would run the meet. This was the clubs in Ottawa, but they weren't prepared on that sort of short
10 notice in terms of trying to secure enough volunteers in order to put the competition on to include the organization of the doping control station.

So, that came back basically to my office to make certain that we had that doping control station in
15 place. I went out and tried to get the people that I believed to be knowledgeable in the field and experienced in the field to assist us who were in the area.

I went specifically to a friend of mine, a colleague from university, who was a medical doctor who
20 had been involved with the medical team in Sudbury in 1980 and who had since moved to Ottawa. And I went to him and asked him if he would help me set up the doping control station. And he indicated to me that he was not
25 interested in being involved in helping set up a doping control station because philosophically he did not believe

that there was any scientific evidence that steroids helped improve performance, and that he felt that by carrying out a testing program what we were doing was reinforcing in the athletes' minds that steroids did work because otherwise why would we bother to test for them.

Q. I take it, if I can interrupt, though, without going through each and every instance there were matters of procedure and details like the set up of a doping control station that takes some time to gain some experience with and to get people who are competent to do that. And that's a sort of thing that takes you some months to develop?

A. That's correct. And if I can just finish this because I think it is important to understand this point in terms of the climate we were operating at the day in terms of trying to do this.

Dr. Pipe, who happened to be the doctor involved that I approached, indicated to me he wasn't prepared to help because he felt all testing was doing was reinforcing in the athletes' minds what he felt as a false premise. So, he would not help us set up a doping control station, and I had to search out other people, less experienced people. And we then got involved in setting up a program.

And I brought the woman who had organized

the program in Regina in at the last minute to help us out, because the woman who was organizing the doping control station in Ottawa felt very frustrated there wasn't a Standard Operating Procedures. And out of the whole thing then after the championship we took that experience and the experience of the year before and then sat down and plus the information we could gather from the IAAF and the IOC and started to develop our Standard Operating Procedures.

And over a period of time, more and more documents came in to us and we were able to refine it and we sent it out to people like Dr. Dugal and other people to get their input and make further adjustments and refine it over the following 12 months.

Q. Before we leave this incident, I take it you would agree with me that Dr. Pipe's views right now are very well known, and I think he is an effective and a well known advocate for testing?

A. He is very much opposed to doping, no question about it. And he's always been opposed to the use of steroids. And he is certainly a very leading advocate in the country at this time.

Q. And he now manifests his opposition by his work at the SMCC and his involvement in testing itself?

5 A. I have worked with Andy over the past four years really closely on the whole thing, there is no question of that, but I am just trying to show again this was the climate of the day and the changes that have taken place.

 Q. I take it with respect to the in-competition testing it took some time, perhaps philosophically as well as practically, to get the thing running?

10 A. There wasn't much philosophical movement to take place for in-competition testing. That was very simple. It was the actual nuts and bolts that we had to make certain were in the right places.

15 Q. And I understand that with respect to the out-of-competition testing, similarly there was a period of time some years especially in the '86 - '87 period where there was work on detail. There were issues that came out, for example, how do you locate athletes, matters of procedure and practicality which had to be
20 worked out before you could have an effective program; isn't that correct?

 A. Well, very definitely. I mean it is a major undertaking, particularly in a sport like track and field which is an individual sport and you have athletes
25 scattered basically all over North America and very often

you don't know where there are at any given time.

Q. I take it even philosophically within the CTFA Board, although there was no question about wanting to have an effective anti-doping program, there was some concern about whether the CTFA should be the agent to do this or whether you should look to an independent or arm's length party to do as much of the testing as possible?

A. There certainly was a problem and there is also again the ongoing concern about individual's rights and freedoms and in terms of the Charter, in terms of things that were expressed by Bruce Kidd in his book in 1982 on Athletes' Rights in Canada that were brought up. And that whole issue of individuals was a very great factor.

Q. Now, if I could ask you just finally to turn to tab 10 of the book of documents. I just want to -- there is in this book of documents a memo dated May 22, 1985 from Terry McKinty to the CTFA Board.

I think it is in about the middle of the page, Mr. Commissioner, under tab 10.

THE COMMISSIONER: Yes.

MR. DePENCIER: A memo of May 22, '85 from Terry McKinty and Board of Directors and has Intro, Gerard Mach.

THE COMMISSIONER: Go ahead.

MR. DePENCIER:

Q. I see it indicates here that it has
5 been recommended by Sport Canada and the Sports Medicine
Council of Canada Committee on Doping that the CTFA
initiate in 1986 or as soon as possible the following
designed programs for procedures for the conduct of random
individual testing of athletes while training in their
10 home environments.

I take it that's what you would have
understood that at the time to mean out-of-competition
testing?

A. Very definitely, no question about it.

15 Q. Would that also be testing outside of
formal training camp environments?

A. Very definitely.

Q. So, I think that you would agree that
even as early as the spring of 1985, late winter, it was
20 clearly Sport Canada's views that work should be done to
get these sorts of programs in place?

A. I was member of the SMC Committee on
Doping and Amateur Sport and there was no question about
it from that if I wore that hat, which I did at that time,
25 that we were pushing for that kind of program to be in

place.

MR. DePENCIER: Thank you, sir. Those are my questions, Mr. Commissioner.

THE COMMISSIONER: Thank you. Mr. Bourque,
5 do you have any further questions?

MR. BOURQUE: No, I don't.

THE COMMISSIONER: Mr. Armstrong.

MR. ARMSTRONG: Just one question.

10 --- RE-EXAMINATION BY MR. ARMSTRONG:

Q. In response to some questions from Mr. Bourque about rumors that existed during the eighties, you said, yes, of course, rumors existed and indeed you told me as much, but you then said, well, you can't chase every
15 rumor down, as it were, because there were so many; is that right?

A. Well, not so much that there was so many rumors specifically about doping, but you sort of reach the point where unless somebody is coming forward with something that is concrete to act on, you just
20 dismiss it as either sour grapes or whiny on behalf of the individuals. And you just say, fine, let's get on with the job and get back to training and doing hard work as opposed to looking for excuses all the time.

25 Q. Of course, hindsight is 20-20 vision,

but, of course, what we know now is that most of the rumors that related to the throwers at the elite level and most of the rumors that related to many of the sprinters at the elite level had, of course, a lot of credence, right?

A. I wouldn't use the term "most". I would say that there was a small group of throwers and there was a small group of sprinters that were involved. And I think that it is an injustice to Canadian track and field to imply that all of the Canadian team, national team, elite members of the national team were involved. There was two small groups of athletes in Canadian track and field that were involved in doping.

Q. Well, you have got Gray who is the Commonwealth record holder in the discus, you have got Dolegiewicz who is for years the leading proponent -- the leading thrower in Canada. They come forward and testify that anybody who is going to aspire to achieve at the international level at any respectable competitive level has got to be on steroids. And they say it is a close knit group and these people are on steroids.

And we have had Dajia and Spiritosa who confirm that evidence.

We have had any number of sprinters paraded in here one after one who have made that comment. All I

am suggesting to you is that the rumors that you and others were hearing at the time appear now, with the benefit of hindsight admittedly, to have had some substantial credence to them?

5 A. The rumors about the group of throwers, yes; the rumors about a group of sprinters, yes.

 Q. All right. Whereas you may make a valid point that you can't chase down every rumor, what an effective organization can do, I suggest to you, is in fact implement a program that has a sufficient deterrent to it to deal with the problem. And I put it to you that an effective out-of-competition testing program implemented early in the piece might well have dealt with the problem a lot earlier than it has been dealt with now.

10

15 A. I am not going to argue with that. I have been pushing for that program for years. However, I think that in fairness to the Association one has to look at the manpower resources and the financial resources available, and plus the climate of the day in terms of rights and freedoms and everything else.

20

 We would have had to have the powers that only Customs and Immigration have in this country in order to carry out that. We would have to have more powers than the police have to do that.

25 The only people that have that kind of power

in this country are, as I say, probably Customs and Immigration, maybe Revenue Canada to carry out the kind of program that would have been effective at that time.

THE COMMISSIONER: Well, that's not quite
5 right, but we are not going to debate that with you. Your program itself, if implemented back in '82, would have been valid, every athlete who would have desired to compete would have to agree to the test that was set forth in your rule.

10 THE WITNESS: That's right.

THE COMMISSIONER: So, I don't understand, with all respect you have lost me.

MR. ARMSTRONG: Those all the questions.

THE COMMISSIONER: Thank you. Any other
15 questions?

Thank you, very much for your assistance,
Mr. MacWilliam. 2:30.

--- Luncheon recess.

20 --- Upon resuming.

THE COMMISSIONER: Ms. Chown.

MS. CHOWN: Thank you, Mr. Commissioner.
Our next witness is Cecil Smith and he is present.

25 THE COMMISSIONER: Mr. Smith.

CECIL SMITH: Sworn.

--- EXAMINATION BY MS. CHOWN:

THE COMMISSIONER: Mr. Buckstein, are you
here with Mr. Smith?

5 MR. BUCKSTEIN: Yes, I am.

THE COMMISSIONER: Thank you. I won't
need this this afternoon, I don't think.

MS. CHOWN: I hope not, Mr. Commissioner.

10 THE COMMISSIONER: It is heavy, just be
careful. All right Ms. Chown.

MS. CHOWN: Yes, Mr. Commissioner. I am
going to start off with Mr. Smith by reviewing some
aspects of his Curriculum Vitae, and I wonder if I could
put a copy of it before you.

15 THE COMMISSIONER: Thank you.

THE REGISTRAR: It will be 261, Mr.
Commissioner.

THE COMMISSIONER: All right.

20 --- EXHIBIT NO. 261: Curriculum Vitae of Mr. Cecil Smith

MS. CHOWN:

Q. Mr. Smith, you are a native of Wales?

A. That's correct.

25 Q. But you are going to testify in English

today, are you?

A. Well, I am bilingual, Welsh or English.

MS. CHOWN: If I could, Mr. Commissioner, I
am going to start off working from the back of Mr. Smith's
5 Curriculum Vitae to the front.

MS. CHOWN:

Q. After obtaining your education in
Britain, Mr. Smith, in engineering, I understand that you
10 worked between 1955 and 1973 for three companies in
Britain in the capacity of an industrial engineer?

A. That's correct.

Q. That was after serving your
apprenticeship in mining engineering with the National
15 Coal Board?

A. Yes, I came from a small town, and the
only occupation in them days was coal mining. So, I
suppose I was raised to be a mining engineer.

Q. You came to Canada in 1973 and began
20 work in Canada for Massey Ferguson and you worked for that
company as a senior industrial engineer between 1973 and
1977?

A. That's correct.

Q. And from 1977 up to and including the
25 present you have been with the Ontario Track and Field

Association and at the present time you are the Executive Director?

A. That's correct.

5 Q. How long have you held the post of Executive Director?

A. Thirteen years.

10 Q. And just for completeness, I understand that prior to 1977 you were in fact associated with the Ontario Track and Field Association in a volunteer capacity?

A. Yes. I was on the Board of Directors, as well as Chairman of the Coaching Association of Ontario.

15 Q. And turning for a moment if we might to your own athletic background, and, Mr. Commissioner, if you look on the third page of Mr. Smith's Curriculum Vitae, you indicate that you were an 800-metre runner competing in Britain?

A. That's correct.

20 Q. You say you were an athlete at the county standard. What is that, Mr. Smith?

25 A. Well, without sounding facetious, I suppose that's Canadian level, but nevertheless county standard means pretty good standard, but not good enough to become a full international athlete.

Q. During what years were you competing as a 800-metre runner?

A. In the fifties and sixties, cinder tracks.

5 Q. As well, your Curriculum Vitae indicates that you did some coaching and in particular held the position of the Head Coach at the Harlow Athletic Club?

A. That's correct, just outside London.

10 Q. What did you coach?

A. In Britain, I was the secretary for what was called a specialist club, the British Milers Club. And when I arrived in Canada, I could see, my own view was that it was better for me to get involved in the field events. So, although I was a specialist in running in Britain, I changed my own philosophy to field events.

15 THE COMMISSIONER: To what events? Field?
I didn't hear you.

THE WITNESS: Primarily high jump.

20 THE COMMISSIONER: All right.

MS. CHOWN:

Q. You also touched on the fact that you were associated with the British Milers Club --

25 A. Yes.

Q. -- while you were in the United Kingdom. And as well, you were Southern Counties Olympic Training Camp Coordinator while you were living in Britain?

5 A. During the four-year cycle we were always having what we call Olympic Preparation Camps moving from 1968 Mexico to 1972 Munich. We was always once a month holding what we called Olympic Preparation Training Camps. And I was the coordinator of that.

10 Q. You have continued your involvement in athletics from the time that you arrived in Canada, and I would like to touch on some aspects of that involvement apart from the OTFA. And those are listed at page 2 of your Curriculum Vitae.

15 You are the founder of the Pan American Junior Track and Field Championships, and this particular event started in 1980?

20 A. Yes, I suppose early opportunity coming from a European background, having attended European Junior Championships, which are formed in the early fifties, I could see the benefit that it had for Britain in the junior area. Consequently, when I arrived in Canada in '73, I could see that the junior program for Canada, at least, left a lot to be desired. And I
25 thought, well, what the heck, why not develop a

hemispheric games for the junior athletes because in particular it would help Canada.

So, I proceeded, it took five years, and we had our first Pan-Am in 1980 in Sudbury. And it has been
5 held every two years ever since. This year it was held in Argentina.

Q. Also, you were the Meet Director and Vice President of Athletics at the World Junior Championships in Sudbury in 1988?

10 A. That's correct.

Q. You initiated and were involved with some rule changes again concerning juniors, and in this case junior women. And what was the particular focus of the change in rules that you were involved with?

15 A. While, I was trying to develop the Pan-Am Junior Track and Field Championships, I cannot understand why the women were 18 at the European level and men were 19. And having done a little bit of research, I found out that it was no more than an arbitrary decision
20 to class junior women as 18 and junior men as 19. There was no physiological analysis, there was no physiological determination as to why that break.

So, I, with the Canadian Track and Field Association, embarked on a study. I collected the
25 information from different countries, and to cut a long

story short, Canadian and track and field, we made a presentation to the IAAF that junior women should be the same age as junior men 19-19. And it was voted in at congress of the IAAF.

5 I consider that a major accomplishment when you can influence 182 countries.

Q. That change, I understand, was made in 1988?

10 A. Yes. Yes, it was made by the Canadian Track and Field at congress in Greece, I believe.

Q. You have as well been involved as an administrator at the 1976 Olympic Games, the 1978 Commonwealth Games, and the 1983 World Student Games?

15 A. That's correct. I was the announcer at the 1983 World Student Games.

Q. You are a member of the Association of Track and Field Statisticians?

A. Yes.

20 Q. I am going to be asking you some more questions about statistics that you have prepared for us later on, so perhaps it would be appropriate to pause here and ask you what is that association and who are its members?

A. Again in Britain, they are called NUTS.

25 Q. They are called?

A. That's not to be derogatory, that's N-U-T-S, the National Unit of Track Statisticians. We came up with that acronym simply because you have got to be nuts to do it. That's why we called it NUTS.

5 Q. All right.

A. The AFTS was formed in 1930ish and it is a collection of volunteers like myself in different parts of the world interested in the collection, the analysis as to exactness, and all rules being pertained to
10 in statistics i.e., Canadian records, performances, verification of age and so on and so forth.

So, throughout the world we have a huge network. We have membership in 143 countries, I believe. And we produce the Annual, which is this thing, which has
15 now become the Bible of the International Amateur Athletics Federation. If your name is not this book, the chances are you never obtained a performance.

THE COMMISSIONER: Can I see it?

THE WITNESS: Yes, you can become a member.

20 THE COMMISSIONER: Is my name in it?

THE WITNESS: Your name is there; you are
in the 100 meters.

MS. CHOWN:

25 Q. The official title of that publication

that you have handed to the Commissioner, Mr. Smith, is what?

A. It is the International Athletic -- to be honest, I can't remember the full name.

5 THE COMMISSIONER: International Track and Field Annual -- Annual Association?

THE WITNESS: Yes, International Track and Field Annual. It is put together by Peter Matthews who also puts together the Guinness Book of Records.

10 THE COMMISSIONER: How often does this come out?

THE WITNESS: Each year.

THE COMMISSIONER: Each year?

THE WITNESS: Each year.

15 THE COMMISSIONER: And published where?

THE WITNESS: It is published in Europe.

We start putting all things together about November of each year, and we always try for a deadline of about April or May because that's when the big track and field starts.
20 And it is very useful to the media, especially the media, to get the background. If you look at all the data, biographies and stuff like that, you will find it extremely useful.

25

MS. CHOWN:

Q. What is your involvement with respect to the Canadian statistics that appear in that volume?

5 A. I do the biographies on the Canadian athletes, submit rankings, performances, records or whatever to the editor, which is Peter Matthews. So I would be the link for Canada with that book.

10 Q. Just following on in your curriculum vitae, apart from your statistical work, you have also been the chairman of the Canadian Juniors between 1975 and 1983?

A. Yes.

Q. You were the meet director at the Hamilton Spectator Indoor Games for the past four years?

15 A. Yes.

Q. You are the publisher of Athletics Magazine, which is a national track and field magazine?

A. That's correct.

20 Q. If I can ask you briefly to comment on Athletics Magazine and what its connection with the Ontario Track and Field Association is?

25 A. It was originally formed in 1976 because it was felt by the Board of Directors of Ontario Track and Field that we needed a vehicle for our membership as a whole within Ontario for communication.

We have did not have a proper communication with our membership other than a monthly newsletter that went to club executives. So we decided, at that time, we would come up with a magazine which is called "Ontario Athletics".

We started producing that back in 1976, but in 1977, I could see that we probably weren't going to go too far with the magazine because we couldn't generate any advertising to support the content because it was oriented towards Ontario only. So we broadened the structure, and it thus became a national magazine subscribed by people all over Canada, especially in the track and field family, and it has grown from there.

I believe that if we didn't have this magazine -- a copy of it is here -- many people, whether you are living in Victoria, Newfoundland or Quebec, wouldn't know what was going on, not just domestically but also internationally because we try to keep them up to date and abreast of the happenings, with interviews with top athletes, Canadian as well as international; the rankings of world, world junior, and so on and so forth. Canadian Track and Field has copies. Sport Canada has copies. I think just about everybody subscribes to the magazine.

Q. How often does it come out in a year?

A. It comes out nine times a year.

Q. You have yourself listed as publisher of the magazine. I understand, however, that you are a contributor to the magazine, not only having your own
5 column in it, but from time to time contributing news features?

A. Yes. I suppose that I'm publisher by default simply because I'm the executive director, I suppose. Over the years, I've always shown a very keen
10 interest in keeping abreast of what happens outside of Canada because I firmly believe that if you become too parochial and think that you're the greatest within your own little pond, then you're never going to aspire to anything great. Consequently, I try to keep them abreast
15 in my "Inside Track" column of certain happenings that I feel people should know. I give them the World Junior rankings. Where else would they see these rankings so that a youngster at 18 in Red Deer, Alberta, could at least now compare his 1500-meter time with the 10th best
20 at the World's? So that would be a motivation for that athlete, depending on where he lives, to aspire to something. So it has an international favour.

Q. Also listed on your curriculum vitae is the fact that you're the Chairman of the Ontario Track and
25 Field Coaches Association. What is that association?

A. Well, that was back when I stepped off the boat, so to speak. In 1974, I became the Chairman of the Coaches Association. On our committee at that time, funnier enough, was Tom MacWilliam. That entailed again using my knowledge at the international level of collecting and distributing information to Ontario coaches, working with Geoff Gowan on certification at Level 1, Level 2 and Level 3 because at that time Ontario was the only province that had certification going in 1974-1975, but again it was just in a volunteer capacity.

Q. We referred to your coaching activity in the United Kingdom, but you were also a coach for a period of time here in Canada, in fact the head coach of the Etobicoke Striders Club?

A. Yes.

Q. What period was that, Mr. Smith?

A. Again, from '73 until I took the position with OTFA for three, four years, and then I dropped off.

Q. You took that position with the OTFA in 1977?

A. December '76, yeah.

Q. You also mention that you have not only contributed to your own magazine but you have done a lot of writing on Canadian track and field, both a historical

view and current events, and you have through the years sat on a variety of committees dealing with planning for track and field, setting rules and policies; is that correct?

5 A. That's correct, yes.

 Q. You have as well been the event director at various track meets through the years. We've referred to some of those earlier, and you also have been a lecturer for the IAAF at sports seminars and symposiums?

10 A. That's correct.

 Q. Mr. Smith, I wonder if you could start off by briefly outlining for us what your day-to-day responsibilities are as executive director of the Ontario Track and Field Association?

15 A. Basically it's to keep the operation or keep the Association functioning on a daily basis; responsible for staff in the office; responsible for funding or sponsorship or marketing; responsible for the activities in the technical area, i.e., track meets, rule specifications, event specifications, certification of road race courses, and things of that nature. In other words, you're the be-all-and-end-all in a very small operation like we have, but you're trying to be the public relation's officer for the Ontario Track and Field Association.

20

25

Q. I'd like to ask you to turn your attention first of all to the issue of carding. This is an area that I understand from you you've had a significant interest in carding and the way it's developed in this country over the years?

A. M'hmm.

Q. You were first involved with athletes applying for federal funding, I understand, in the early --

THE COMMISSIONER: Are you speaking of the Sport Canada funding or the Ontario funding -- carding, I mean?

MS. CHOWN: I'm sorry, Mr. Commissioner, the funding available from the federal government that Sport Canada --

THE COMMISSIONER: The province has a carding system too?

MS. CHOWN: Yes.

MS. CHOWN:

Q. And, in fact, do you have any responsibility through your office for assisting in the administration of the Ontario funding for athletes?

A. Well, we have to backtrack. Leading up to 1976, the system was called "Game Plan '76", and at

that time, I was the Chairman of the Ontario Coaches Association. I was the direct link with the province of Ontario because they had seconded Bob Secord to work or the Canadian Olympic Association had seconded Bob Secord to administer the program along with Abby Hoffman. In track and field, I was nominated by the Board of Directors to be the link for the Ontario athletes to make an application to apply our money for training or competition leading up to the 1976 Olympic Games. As I say, it was then called "Game Plan '76".

Q. So this would be in the period, say, 1974-75?

A. Yeah, '76, something like that. That's true.

Q. Following forward from that early involvement and dealing first of all with provincial funding, when did you first become involved with the administration of the provincial grants to Ontario athletes?

A. I believe the provincial carding system started about 1981. It has been called all sorts of different names. Each year we seem to change the name. Currently it's called the "Best Ever" program, but it started in 1981 to run alongside the national carding system, in other words, to try to catch those athletes who

may not be ready for the national card system but they acquired a certain number of points or a certain standing to be given a provincial card. That started in, I think it was, 1981. I was, still am, the executive director.

5 However, the facilitator of that program is still Mr. Dave Smith, the York University Vice-President. He is the coordinator of that program.

Q. Did you as executive director of the OTFA have any involvement in the discussion of what
10 standards should be applied to Ontario funding?

A. Oh, yes. Obviously the two systems are vastly different, but we made sure that we would have our own made-in-Canada carding system utilizing our own provincial championships and our own national
15 championships as well as the Canadian ranking. We were trying to make it as objective as possible so that the athletes could virtually self-select themselves because we would apportion points to certain events such as what I've just named. At the end of the year, if you had X number
20 of points, you were an A card -- or sorry, a gold card or right now we have a silver card too, a gold card and a silver card.

Q. Turning to the national program which you said is running in tandem or in parallel, I wanted ask
25 you first of all in the early 1980s and in particular

prior to the Pan-American Games if Venezuela in 1983 what your views were of the standards that were used in the federal funding to athletes?

5 A. Well, I never did like it. I'll be absolutely honest on that because we started off -- and I don't know how it developed, the top 8 and top 16, the top 8 in the world and top 16 in the world. Nevertheless, that's the system that was invoked at the time and that's the system that's still with us. I was not part and
10 parcel of any of that discussion.

 THE COMMISSIONER: Well, the top 50 for the C card?

 THE WITNESS: And top 50, sorry, top 50 for the C card. At that time --

15 THE COMMISSIONER: I gather that's what the rule was when the system was inaugurated; is that right?

 THE WITNESS: Yes, when the system was inaugurated --

20 THE COMMISSIONER: And what year was that; do you recall? We should have that.

 THE WITNESS: You probably have that. I can only guess. It must have been about '79 or '80, but I stand to be corrected because I'm not sure.

25 THE COMMISSIONER: In the middle or late 70s?

THE WITNESS: Well, it was Game Plan '76,
and it was a follow on from that.

THE COMMISSIONER: All right.

5 THE WITNESS: Game Plan '76 didn't have
cards as such, just identification.

THE COMMISSIONER: Right. That was the
first funding, though, was it?

THE WITNESS: That was the first funding
brought about in 1973.

10 THE COMMISSIONER: But anyway, when the
plan was inaugurated, they adopted this rule, I gather?

THE WITNESS: They adopted the new rule for
carding. The top 8 is an A card; the top 16 is a B card
and the top 50 in the world was C card. That's when the
15 book that you have became the panacea. That became the
Bible.

MS. CHOWN:

20 Q. That's what was referred to in
obtaining these cards?

A. Oh, yes. That's correct.

Q. Moving forward to 1983 and in
particular the events that took place in Venezuela that
year, I take it in the ordinary course of events as
25 executive director of the OTFA, were you present at those

games?

THE COMMISSIONER: Pan-American Games in
Caracas?

MS. CHOWN: Yes.

5 THE WITNESS: No.

MS. CHOWN:

Q. But you're aware of --

A. Oh, yes.

10 Q. -- what occurred at those games with
respect to positive tests for athletes and athletes
leaving the village to avoid testing?

A. Yes.

15 Q. Did those series of events in 1983 have
any impact on your views on the carding system?

A. I think my views are well known. I've
always been strongly against the carding system in Canada
because I think it strikes against the Canadian athlete in
track and field.

20 Q. Let me just, so we start from a fair
premise, ascertain exactly what you're saying. When you
say you're against the carding system, I take it are you
against athletes receiving financial assistance from the
federal government?

25 A. No, I'm not against that. Let me just

backtrack, if I may. At our various ATFS meetings, which we usually hold in different parts of the world surrounding a major meet, I remember reading documentation on Harold Connelly. He was talking before a judicial
5 injury in 1973 in the United States. This guy was an Olympic champion, and he admitted at that time that he had been taking anabolic steroids. I can remember the discussions that we were having just as an ad hoc
10 volunteer committee within statistics that what do we do with this guy in the hammer and what was going on in the sport, because at that time, anabolic steroids, although on paper, were banned. They were originally banned by the IOC in 1967, but they didn't come into practice until
15 1976. That was the first time that steroids were tested for in the Olympic movement. Up until that time, in 1968 and 1972, there was just amphetamines, bennies, cocaine and that sort of stuff.

We used to have discussions at that time. I remember people saying quite likely within our rankings in
20 that book, in the 70s, there were performances that shouldn't be in there because people were cheating. That stuck with me, having read what Harold Connelly had to say in the United States, and you heard other people from Europe and the United States talking about the charlatans
25 in our midst who were cheating in sport. How do we treat

these guys?

Then along comes Sport Canada and comes up with the top 8, top 16 and top 50, and I just couldn't accept that, because using my background and conversations
5 and doing my research and reading, I felt that was very wrong. There was no consultation, as far as I know, with people like myself in statistics or international statisticians, if you like. I just think it was an in-house thing.

10 Q. As a result of the personal views that you held on carding standards at the federal level, I understand that you engaged in a series of correspondence with the then Minister, Mr. Otto Jelinek?

A. Yes.

15 Q. I'm going to ask you, Mr. Smith --

THE COMMISSIONER: Was that the first time you communicated your views to Sport Canada or to Ottawa?

THE WITNESS: In writing, yes.

20 THE COMMISSIONER: In writing. Had you discussed it before?

THE WITNESS: I don't think so.

THE COMMISSIONER: All right.

25 MS. CHOWN: Mr. Commissioner, I'm going to review a series of letters between Mr. Smith and Mr. Jelinek, and I wonder if I might put that package before

you now.

THE REGISTRAR: 262, Mr. Commissioner.

5 --- EXHIBIT NO. 262: Series of letters between Mr. Smith
and Mr. Jelinek.

MS. CHOWN:

Q. Mr. Smith, do you have a copy of those
letters before you?

10 A. Yes, I do.

Q. The first letter in Exhibit 262 is a
letter dated December 20th, 1984, directed to the Right
Honourable --

15 THE COMMISSIONER: Excuse me. What exhibit
is this?

THE REGISTRAR: 262.

THE COMMISSIONER: Sorry.

MS. CHOWN:

20 Q. -- directed to the Right Honourable
Otto Jelinek, Minister of Fitness and Amateur Sport, and
signed by you. That letter does appear on Ontario Track
and Field Association letterhead. Were you writing that
letter in your capacity as executive director of that
25 association?

A. No. I believe I was writing this as an individual concerned for Canadian athletics and about carding in particular. I don't think I was writing that as executive director.

5 Q. Was there any particular impetus that you had around about December of 1984 that led you to write to the Minister?

A. Well, I think like everyone else, we were embarrassed as to what happened in Caracas, but it goes further back than Caracas because we had an
10 embarrassment in 1981. In 1975 --

Q. I'm sorry. When you refer to the embarrassment in 1981, what are you referring to?

A. We had our second positive dope test in
15 track and field --

Q. All right.

A. -- in 1981. Our first one happened in 1975. Then what shaped up in Caracas was just compounding the problem, I felt, and that by now, surely we have to
20 take our heads out of the sand and recognize that we may have a problem in our sport. Again I was calling on my experience, having read and visited many countries and heard people like Harold Connelly and other athletes admit to taking steroids after they retired, and I was trying to
25 stress to Mr. Jelinek at that time that surely for the

benefit of Canadians it would be better understood if we could develop, and we could, a made-in-Canada standard. Now I'm not saying that would be perfect. I'm not that naive, but what I am saying is that something within your own shores you probably will have a better opportunity of controlling. You cannot control external forces. So let us clean house in Canada first.

Q. Let me just stop you there and come back --

THE COMMISSIONER: I'm sorry. You're talking about two different things, I think. You're talking about the carding system being based on what you think are inappropriate standards?

THE WITNESS: Yes.

THE COMMISSIONER: Cleaning house is eliminating the use of drugs. That's another issue. Isn't that --

THE WITNESS: No. I was trying to make Mr. Jelinek, trying to make him understand that the standards that he was developing were contaminated.

THE COMMISSIONER: You say the standards which were being used as a measuring stick were unfair because, in your view, they were as a result of performance-enhancing drugs?

THE WITNESS: Contaminated.

MS. CHOWN:

Q. I just wanted to bring you back
specifically to what you said in the letter to the
5 Minister and, in particular, paragraph 2 you state: "My
concern, however, is this: While..."

THE COMMISSIONER: Well, I think you should
start from the beginning, Ms. Chown.

10 MS. CHOWN:

Q. All right. Let me read your opening
paragraph.

"Dear sir, I applaud the actions of your
Ministry regarding Canada's stance on
15 athletes using chemical aids. If only all
sports could be rid of these drugs, we in
the sporting world [I think it should be]
would be far better off.

My concern, however, is this: While
20 Canada is taking this commendable step to
wipe out drugs from sport, it is being
hypocritical in the establishment of
standards for carding purposes - especially
in track and field."

25 And that is what you have just referred to?

A. Yes.

Q. The hypocrisy, in your view, comes about by the use of --

A. That's correct.

5 Q. -- standards from world performances --

A. That's correct.

Q. -- that may be achieved with drugs?

A. That's correct.

Q. Then your third paragraph, you say:

10 "As long as we continue to use external statistics in the selection process, we are virtually condoning drug use."

THE COMMISSIONER: I'm sorry. I don't follow that. You are saying that in order to meet the
15 standards, our athletes will be taking anabolic steroids?
Is that what you are saying?

THE WITNESS: You could take it as that, but I'm not saying that Canadian athletes were or are taking performance-enhancing drugs. I'm just saying that
20 by use of external statistics, the individual athletes could see the unfairness of being compared with somebody from another country, which they may feel that country's code of ethics is a lot different from Canada's code of ethics, so why should I be punished?

25 THE COMMISSIONER: Punished in the sense of

not being carded? Is that what you mean?

THE WITNESS: Yes. That's not to say to lighten up the carding criteria. Nobody wants a free ride, but you've got to be fair.

5

MS. CHOWN:

Q. And in fact in your third paragraph, you refer to the fact, if I can just quote:

"If these charlatans ..."

10

And by "charlatans", you're referring to athletes taking performance-enhancing drugs?

A. Yes.

15

Q. "If these charlatans were not in the rankings, the rankings from which carding is assessed would depict a totally different picture. How much of an effect drugs have on the world rankings is uncertain, but we do know that they are having an effect."

20

Now as a result of your view of that international situation, I'd ask you just to focus for a moment on what your solution or your suggestion that you put to the Minister was as a result of the world ranking situation as you saw it?

25

THE COMMISSIONER: Made-in-Canada criteria is what your slogan was?

THE WITNESS: Yes.

THE COMMISSIONER: What was it? What was the made-in-Canada criteria?

5 THE WITNESS: We could develop a few things. First, we could develop and use a Canadian championship.

THE COMMISSIONER: Do you spell it out here?

THE WITNESS: No, no.

10 THE COMMISSIONER: Oh, you don't spell it out here?

15 THE WITNESS: No. I was trying to catch the Minister's eye in the hope that it may stimulate the Minister to charge one of his civil servants to have a meeting with Canadian Track and Field, with myself present, because although I was doing this as an individual, I felt that I was supportive to the sport. So that's all that I was doing was trying to stimulate a discussion and come up with a system.

20

MS. CHOWN:

Q. And I believe, Mr. Smith, that as the correspondence goes on, you do become a bit more particular as to what your suggestion was?

25 A. Yes. As the letters starting going

back and forth --

Q. Perhaps we can just follow them through. The next document in exhibit --

THE COMMISSIONER: Well, I notice that
5 "Take advantage of the expertise available..." was Bruce Pirnie. Well, Mr. Pirnie has testified that he was using steroids.

THE WITNESS: I was trying again to show
10 the Ministry that here in Canada we would probably have athletes who were prepared to come forward and help the Minister and tell the Minister the reality of sport, and that with people like Bruce Pirnie, Dave Steen Sr., Mike Mercer and other people, these people could be helpful, similar to how Harold Connelly was to the U.S.A.
15 investigation.

THE COMMISSIONER: That's Dave Steen Sr.
you are speaking of there?

THE WITNESS: Yes.

THE COMMISSIONER: And who is Borys
20 Chambul?

THE WITNESS: Borys Chambul was a discus
thrower. He's retired now. He has a vast knowledge in science, but above all he was an international thrower. I just felt that these guys were perfect.

25 THE COMMISSIONER: Well, Mr. Steen by that

time had admitted his use?

THE WITNESS: Yes.

THE COMMISSIONER: Had Mr. Pirnie admitted it by that time, back in '84?

5 THE WITNESS: I believe Bruce Pirnie had admitted --

THE COMMISSIONER: And Mr. Chambul had too?

THE WITNESS: No, no. Mr. Chambul -- I'm not saying that these people were drug takers. I'm not
10 alluding to the fact that Borys Chambul -- what I'm trying to show here is that the man has been on the international platform, and he has the scientific background.

THE COMMISSIONER: That could help develop a made-in-Canada criteria?

15 THE WITNESS: He could help to channel the Minister or the bureaucrats up there.

THE COMMISSIONER: All right, thank you.

MS. CHOWN:

20 Q. And channeling the Minister or whomever in particular with concrete or specific information about the extent of drug use and the effect on world rankings that these athletes had experienced?

A. Hopefully give the Minister their
25 experiences, confidentially I suppose, so that the

Minister could have a better grasp of what's happening in the sport. I'm sure he did, Mr. Jelinek did, because he was a national sports athlete himself.

Q. In response to your letter, Mr. Smith,
5 you --

THE COMMISSIONER: Well I think all this, Ms. Chown, was directed towards the carding system, was it?

THE WITNESS: Yes.

10 THE COMMISSIONER: Not the anti-doping policy of the government?

THE WITNESS: No, no. It's carding.

MS. CHOWN:

15 Q. The Minister did respond to you by a letter dated February 20th, 1985, and he expressed in the second paragraph of his letter a concern that you were suggesting a reduction in carding standards, and he says, and I quote:

20 "It is my belief that a reduction in the minimum standards for carding of elite athletes would have no impact on our objective for the eradication of the use of illegal performance-enhancing drugs."

25 He goes on in that letter at some length to outline the

specific steps taken by the federal government since December of 1983 in support of the anti-doping policy. Now was it your suggestion or your intention at that time to reduce carding standards?

5 A. No. My basic contention was to develop standards and not lower standards to make it easier for Canadian athletes to acquire support, financial support. It was to come up with something that I personally felt was much fairer on the world's platform. It was
10 definitely not to develop an easy route to get to the taxpayer's purse. No way.

 THE COMMISSIONER: I'm sorry. Well, what would it be if it wouldn't be reducing the standards? I thought your thesis that these standards -- take the top 8
15 in the world.

 THE WITNESS: M'hmm.

 THE COMMISSIONER: So theoretically, take a 100-meter sprint, or let's assume that you have to have 10 seconds to be the top 8 in the world.

20 THE WITNESS: Yes.

 THE COMMISSIONER: Your concern was that the top 8 may have achieved that performance record by use of enhancing-performance drugs; therefore it's an unrealistic standard to meet? Isn't that your thesis?

25 THE WITNESS: Part of it, yes.

THE COMMISSIONER: All right. Therefore the only way you would meet that is you would say, well, that standard is not an accurate standard because it's aided by drugs, so we'll make it 10.2 or 10.3. Isn't that
5 how you do it? So you reduce --

THE WITNESS: Standards could have that effect; it could be lower. That doesn't necessarily mean -- and I know this may sound a little odd -- that doesn't necessarily mean that it's any easier, especially
10 when the standards are the top 8 in the world. But the point is, Mr. Commissioner, I hear what you're saying --

THE COMMISSIONER: I'm just trying to find out what -- all right. Go ahead.

15 MS. CHOWN:
Q. Well, Mr. Smith, in fact in your next letter of March 6, 1985, you finally come more specifically to how you would intend to deal with carding, and if we might look at that, it might be of some
20 assistance to all of us.

THE COMMISSIONER: I'm just seeking information. I'm not challenging your thesis at the moment, Mr. Smith. I just want to find out what it is.

25

MS. CHOWN:

Q. In your letter of March 6, 1985, if we can go down to your fourth paragraph, and you state there:

5 "When world rankings are utilized to
determine carding criteria, the single best
performance usually contained in this
ranking is one which was achieved at some
obscure competition or at a competition
10 where the athletes know that no testing is
being carried. The athletes will use this
period on their buildup period and then
adjust to get ready for the championship
testing. So I repeat, what is the value of
championship testing?"

15 And you go on to talk about random testing, but staying
with the first sentence of that paragraph, can I ask you
just to comment on that? First of all, you've said
excellent performances that figure on world ranking lists
often result from some, as you call it, "obscure
20 competition with no testing"?

A. Yes. What I'd like to do, if possible,
is refer to a simple chart that I constructed using the
1988 Olympic final, because I think people in track and
field are well aware that performances in major
25 championships, for some unknown reason, drop off. So what

I proceeded to do was take the 1988 Olympic final --

Q. Now, clearly, in this letter of March 1985, you hadn't compiled this document you're putting before us?

5 A. That's correct.

Q. But had you done a similar exercise in 1985 based on --

A. It wouldn't have made no difference. It wouldn't have made a scrap of difference. I could have used the 1983 World Championships.

10

THE COMMISSIONER: This is illustrating your point, that you're saying that when you look at these world's best standards, as I read this, you might find that athletes obtain that standard in some obscure competition in which there was no testing?

15

THE WITNESS: That's right. I'd like to emphasize, though, the chart you're looking at, the 1988 best performance, the 1988 world ranking, because I didn't do any study vis-a-vis contacting my contacts in various countries, I'm making an assumption that these performances -- there was no drug testing in these performances.

20

THE COMMISSIONER: You don't know that, so --

THE WITNESS: I don't know. I wanted to do

25

that type of study, but I don't know. But what I wanted to show you is that if Ulf Timmerman can throw 22.47 in the Olympic final --

5 MS. CHOWN: Perhaps, Mr. Smith, I can just interrupt you.

Mr. Commissioner, I would just put this chart on the edge of your desk.

THE COMMISSIONER: Perhaps we should mark it as the next exhibit.

10 THE REGISTRAR: 263, Mr. Commissioner.

--- EXHIBIT NO. 263: Chart comparing best performances with 1988 world ranking in the discus and shot put.

15

MS. CHOWN:

Q. And Mr. Smith, since you are referring to it, perhaps I can just take you back. It's a two-page document, the first page dealing with women in the discus, and the second page dealing with men's results in the shot put. You've put together two statistics. You have listed the finalists in the 1988 Olympics dealing with women in the discus, 1 through 12, and you have taken the same finalists and you have looked at what their best performance was in 1988 and as well given their 1988 world

20

25

ranking?

A. That's correct.

Q. So if I understand the way this chart works, if we go down to number 7?

5

A. Yes.

Q. G., I'm not sure how you pronounce that, Reinsch?

A. Number 6?

10

15

20

25

Q. I was looking at number 7?

A. Oh, women. Sorry, I was looking at men. Yes, Reinsch GDR.

Q. Miss Reinsch from the GDR, she came
5 seventh at the Olympics in 1988 with a throw of 67.26 meters?

A. That's correct.

Q. Prior to that time, her world ranking was number one?

10 A. She ended up at the end of that year with a best of 76.80 meters which she threw in July.

THE COMMISSIONER: We don't know where that meet was, I guess?

15 THE WITNESS: Not here, no, but I have got that. It is probably in the book.

THE COMMISSIONER: You can't tell whether --

THE WITNESS: No, no, sir, I can't.

20 THE COMMISSIONER: It is on the assumption --

THE WITNESS: I make an assumption for this chart, but I know that --

25 THE COMMISSIONER: Well, the assumption also is that at testing at out of competition it would be effective to determine whether a person was on anabolic

steroids or not. You see, you could -- she could have been tested in 1988 in July and had a negative finding and still have been on anabolic steroids. You point that out in your letter. That's why you say in-competition testing is really quite ineffective?

THE WITNESS: In my opinion.

THE COMMISSIONER: Well, so I am not sure just what this proves?

THE WITNESS: I would like to state that I wouldn't mind betting that if I went back and did some research that 80 percent of what you are looking at were done in meets outside of major championships, and quite likely there was no testing done, because that's been the format over the years that many of the top-- I know Martina Hellman, the number one ranked GDR who won the Olympic Games, she did her best there at the Olympic Games.

THE COMMISSIONER: She equalled her best performance?

THE WITNESS: Yes, that was her best for that particular year.

THE COMMISSIONER: Well, the more interesting -- well, the top 8 would be 71.06 in 1988; is that right, 71.06 metres?

THE WITNESS: Yes, 71 meters 06 --

THE COMMISSIONER: And yet --

THE WITNESS: Is eighth --

THE COMMISSIONER: 71.06 would have come
third in the Olympics?

5 THE WITNESS: Yes.

THE COMMISSIONER: So, if we had a female
discus thrower who could throw 65.94?

THE WITNESS: Yes.

10 THE COMMISSIONER: She would have been --
she would have come eighth, right?

THE WITNESS: Eighth, yes.

THE COMMISSIONER: But the standard would
have been 71.06; she couldn't have been on the team, isn't
that right?

15 THE WITNESS: No.

MS. CHOWN:

20 Q. We are going to come, Mr. Commissioner,
to look particularly at Olympic qualifying standards, but
I believe the purpose, Mr. Smith, of this chart was simply
a very preliminary analysis of the distinction between
where an athlete placed in the world rankings --

A. Yes.

25 Q. -- which may or may not have arisen at
tested meets, as compared to the Olympics which was a

tested meet?

A. That's correct. You will probably get to it, I was prepared to do a more sophisticated study making use of my contacts in different parts of the world so if someone in Russia, Zvereva threw 71.58, I would communicate with a person that I know in Moscow and ask him to check out to see if there was drug testing at that meet. I was prepared to do that some time ago to try to put some meat on the bone, if you like, to try and come up and show that there is a heck of a variance between the cold hard facts of the book and the reality of the world that we are living in.

Q. So what you would be attempting to do once having done this preliminary analysis is then with your contacts work back for each athlete to the performance that they had that year in a meet that was tested?

A. Yes, that was -- that would have been the exercise to tell you I have come back. And I would hazard a guess that there would be discrepancies between the world top 20 or top 30 working backwards from the world top 20 or top 30 in the book.

Q. And the point that the Commissioner has put to you that the mere fact that there was testing at a meet and the fact that an athlete may test negative, of

course, does not assure us that that athlete did not previously use anabolic steroids?

A. No, that's absolutely correct.

Q. However, the purpose of attempting to
5 look more closely at world rankings was, I take it, to get to a standard that might more appropriately in your view be used for carding rather than simply taking for instance the top 8 performances off the world ranking list?

A. Yes, you must try to bring the
10 standards with the carding in to a closer relationship rather than just saying top 8 world, top 16, three per country and that's it, go away. It is not that simple.

Q. Well, let us continue on then with your
15 correspondence in Exhibit 262. You put forward this thesis in your letter of March 6, 1985 to Mr. Jelinek that one should look more closely at world ranking lists and in particular results that come out of untested meets.

And if I can turn to the next letter in
20 Exhibit 262, you again follow up and amplify the concerns expressed in your letter, this time in your letter to the Minister of April 16, 1985.

That letter starts off "I would like to
25 propose the following for carding criteria." And I would ask you if you could to just comment on the specific things --

THE COMMISSIONER: What date is this,
please? What letter?

MS. CHOWN: April 16, 1985.

THE COMMISSIONER: Yes, go ahead.

5

MS. CHOWN:

Q. Mr. Smith, just comment on the factors
we have heard now about the world ranking list, what other
factors did you say should be considered by the Minister?

10

A. When we first inaugurated the carding
events such as the Grand Prix wasn't around as big as what
it was or was today. The World Championships, having been
born in 1983, back in 1981, and I was suggesting that we
look at world class competition like the World Cup, World
Cup Trials, Student Games, Pacific Conference, Grand Prix
events, major competitions in Europe, Britain and a number
of Canadian competitions and try to develop in concert
with the Sport Canada consultants a type of ranking list
or a type of system that we could then or show or be
fairer to the Canadian athletes.

15

20

The standard would still be very high. We
may not have any more Canadian athletes carded with this
system, but at least we could turn around and say to the
athletes that these meets are all drug tested.

25

THE COMMISSIONER: But that doesn't prove

anything, Mr. Smith. We know that.

THE WITNESS: We learned that;
unfortunately we have learned that --

THE COMMISSIONER: Since, I guess --

5 THE WITNESS: -- drug testing leaves a lot
to be desired. Maybe the laboratory should give all the
money back to the governments or something. I mean, they
have been taking money under false pretenses by the look
of things.

10 MS. CHOWN:

Q. But your view, back in 1985 at the time
you wrote this letter, was that this would be an
appropriate direction for carding standards to follow?

15 A. I believed it would be because it was a
controllable issue.

THE COMMISSIONER: Then Mr. Jelinek writes
back and suggests that you take this up with your
association, I see.

20 THE WITNESS: Yes.

THE COMMISSIONER: "Your continued interest
in this matter is appreciated. As an
official of the Ontario Track and Field
Association you are, however, aware of the
25 fact that it is the Canadian Track and Field

Association which develops and recommends its proposed carding criteria to Sport Canada."

THE WITNESS: Yes. That's right, yes.

5 THE COMMISSIONER: "I would suggest, therefore, that you submit your proposal for a 'Drug free' world ranking list to your national body for consideration."

10 So, apparently this is CTFA which actually sets forth and recommends these standards, isn't it?

THE WITNESS: Ultimately you would go through our national federation.

THE COMMISSIONER: We heard that this morning from one of their officials.

15 THE WITNESS: Yes.

THE COMMISSIONER: What the Minister is saying that he thanks you for your interest but you should be putting this through the CTFA who are, in effect, are the ones that recommend the standards to be followed.

20 THE WITNESS: Yes.

THE COMMISSIONER: Thank you.

MS. CHOWN:

25 Q. In response to the Minister, did you in fact take any steps to communicate with the Canadian Track

and Field Association with a view to following up on your idea of a made-in-Canada standard?

5 A. Yes, I remember talking with Glenn Bogue about this potential of developing a system or developing a procedure where we could collect the information and present to Sport Canada something other than what we currently have, which would be more in line with reality of life.

I know we chatted about this off and on.

10 Q. Do you recall whether that would have been Mr. Smith?

A. That would have been, I believe, in the fall or winter of '85 -- anywhere from December, I suppose, to March. I can't actually -- March of '86, I can't actually remember the exact time, but I know I talked the back end of '85.

THE COMMISSIONER: To Mr. Bogue.

THE WITNESS: Yes, just chit-chatted.

20 MS. CHOWN:

Q. Were any specific steps taken at that time as a result of your discussions with Mr. Bogue?

A. Yes. Not just I, but others. Many people shared the same concerns about the carding and Glenn said, well, maybe we should be looking at doing

25

something in the C card area, today it is called
"hopeful".

So, he asked me could I do an unscientific
evaluation of age groupings, which I did for him. I
5 pulled together three years -- I went back to 1972, I
think, of the Olympics Games, World Championships, and
certain rankings. And I came to the conclusion that
another element had to be introduced into carding and that
was age and maturity.

10 Q. What is the relevance of that as it
relates to particular events in track and field?

A. Well, as an example, a 20-year-old,
dare I say, printer and a 20-year-old hammer thrower,
there is no comparison. A 20-year-old hammer thrower has
15 no chance against a 28-year-old hammer thrower, but a
20-year-old or a 21-year-old sprinter could conceivably
obtain world class levels.

And you can see this in the formation of the
rankings just by looking at years of birth of the maturity
20 of the athletes. Usually in the heavy events, athletes
develop very late. And Glenn was concerned about trying
to bridge the gap between the age of 19 when they then
become senior the following year at 20 to about 23 when
there is a bit of a hiatus, the athletes have no program,
25 many of them couldn't qualify for carding because they

weren't good enough at that level.

So, I gave him the information and I printed it in the magazine in condensed form. And I believe in 1985, the fall -- no, sorry, the winter of '86, I believe hopeful cards first came about in Canada through Glenn Bogue, through his deliberations was Sport Canada.

Q. All right. And after --

THE COMMISSIONER: I am sorry what kind of cards first came in?

THE WITNESS: I believe they were called hopeful cards.

THE COMMISSIONER: Hopeful cards?

THE WITNESS: Yes.

THE COMMISSIONER: That's for a less senior category?

THE WITNESS: Yes, it is a category just below C card, which at the time was top 50 in the world.

THE COMMISSIONER: Right.

THE WITNESS: We had another category of hopeful card, which was trying to bridge the gap between when you become first senior at 20 --

THE COMMISSIONER: Right.

THE WITNESS: -- to about 23, 24 where age becomes a factor. You have got to keep these people going somehow or else they drop off. We have a high drop off in

our sport. So, we had to do something.

So, Glenn with the Canadian Track and Field worked on program and I believe it was successful. And I think it is successful today with Steve Findlay.

MS. CHOWN:

Q. And that program is primarily focused on athletes in heavy events, field events?

A. No.

Q. Or is it --

A. It is geared to all events across the board developed on age categories. I can't remember all the ages, but in the sprints it would be something 23 and in heavy throws it maybe 27 and if you fell between certain ages, you get a hopeful card depending on your performance and age.

Q. It was to take into account the maturation and development of an athlete in each particular event?

A. Yes.

Q. And I understand that you had further conversations and correspondence with Mr. Bogue's successor at the CTFA, Mr. Steve Findlay, concerning carding standards?

A. Yes. Steve asked me if it was possible

to come up with this drug-free performance analysis. I said, yes, we could do it. And I said but it would take, I just threw out a figure, of \$3,000.00.

Q. And let me just stop you there before we go into the detail.

Mr. Commissioner, Mr. Smith has provided me with some correspondence between himself and Mr. Findlay about trying to develop this made-in-Canada standard that I would like to put before you.

THE REGISTRAR: 264, Commissioner.

THE COMMISSIONER: Thank you.

--- EXHIBIT NO. 264: Correspondence between Mr. Smith and Mr. Findlay regarding the made-in-Canada standard.

MS. CHOWN:

Q. And this then following Mr. Jelinek's direction for you to discuss this matter with the CTFA, we have as the first document in Exhibit 264 a memo from you to Mr. Findlay dated January 19, 1987?

A. Yes.

Q. And you propose there:

"We analyze all performances throughout the world, which include all Grand Prix

performances, plus championships such as
Worlds, Pan-Am and Students Games, where we
know drug testing is being carried out.
Also we can assess results from the national
5 championships from various countries.

This, of course, you say is a very large
job that will take literally thousands
of man-hours to check, analyze and compile.
However, the task could be done."

10 You, however, propose a smaller alternative
or starting proposal by a statistical sample.

And once again is what you were proposing to
Mr. Findlay what you have described to us earlier that you
carry out an analysis of the current world ranking list in
15 order to determine what performances arise out of tested
meets and what effect this would have on the world list?

A. That's correct.

Q. All right.

A. I would like to add that the \$3,000.00
20 wasn't for me. The \$3,000.00 was to enable me to pay
small stipends to some Canadian statisticians.

THE COMMISSIONER: Some research.

THE WITNESS: Pardon?

THE COMMISSIONER: You would get a
25 research, a statistician researcher.

THE WITNESS: Yes, and pay a guy in Finland who may do a few countries on my behalf and pay the guy \$100 because we need volunteers, they are not in it for money, but I felt we had to give him something.

5 So, that was what the \$3,000.00 was for.

THE COMMISSIONER: Ms. Chown, I think we might take a little break because we might sit a little later tonight.

MS. CHOWN: All right.

10

--- Short recess.

--- Upon resuming.

15

THE COMMISSIONER: I think you are now going to turn now to a letter of Mr. Findlay, are you?

MS. CHOWN:

20

Q. Yes. As part of Exhibit 264, MR. Smith, you have provided us with a copy of a letter written by Mr. Findlay of the CTFA to Mr. Heikkila at Sport Canada proposing that this idea of yours, a statistical analysis, be carried out?

A. That's correct.

25

Q. And the final document in Exhibit 264 is a letter to you dated April 2nd, 1987, from Mr.

Findlay. And he is reporting to you on a meeting that he had with Mr. Heikkila and Mr. Sorensen of Sport Canada on April 1st, 1987, in which he put forward your proposal for an analysis?

5

A. Yes.

Q. And --

THE COMMISSIONER: Excuse me for a minute. I think Mr. Findlay was sort of picking up your concept, was he not, in his letter to Mr. Heikkila?

10

THE WITNESS: Yes.

THE COMMISSIONER: He is supporting you, I think.

15

THE WITNESS: Oh, yes, Steve Findlay, like Glenn Bogue, was very supportive of the idea because we all felt it was the fairest thing to do.

THE COMMISSIONER: Then, I am sorry, Ms. Chown, I haven't read this last letter, what did --

MS. CHOWN:

20

Q. Yes. It says following that letter to Mr. Findlay, Mr. Findlay in fact met with Mr. Heikkila and Mr. Sorensen on April 1st, 1987 concerning this proposal. And his letter to you of April 2, 1987, Mr. Smith, really reports on that meeting and asks you to assist him.

25

THE COMMISSIONER: It does more than that,

Ms. Chown. It says met with Bill Heikkila and Ole Sorensen on Wednesday, April 1st, and they were very receptive to what we were trying to do in this case.

5

MS. CHOWN:

10

Q. That's right. And he raises the concern expressed by Mr. Heikkila and Mr. Sorensen that this was a way of reducing or relaxing carding standards. And Mr. Findlay put forward the view which you shared that what you were seeking to do was to investigate and analyze and see where that analysis led you?

A. That's correct.

Q. In the third paragraph of his letter Mr. Findlay says:

15

"The CTFA presents a budget claim for its dope-control program within the next three weeks and Ole [Mr. Sorensen] suggested I include the costs of our study in it."
And then he goes on to have --

20

A. Yes.

Q. -- I believe four points of items that should be covered specifically in the proposal to be included within the budget?

A. Uh-huh.

25

Q. You said it was your view that an

allowance of \$3,000.00 would permit you to hire help to carry out a preliminary statistical analysis of the world ranking list?

5 A. I think I said to Steve Findlay that if Sport Canada contributes to our sport about \$600,000.00 in carding, maybe they can afford \$3,000.00 to do a study. I think that was the words I used.

 THE COMMISSIONER: You told that to who, to Mr. Heikkila?

10 THE WITNESS: To Steve Findlay.

 THE COMMISSIONER: To Mr. Findlay?

 THE WITNESS: Yes.

 MS. CHOWN:

15 Q. As a result of that correspondence with Mr. Findlay in April of 1987, did you ever hear what the result was of the budget proposal made by the Canadian Track and Field Association as it related to your plan?

20 A. I was under the impression that -- well, in actual fact, I don't know what I was thinking at the time. I mean, you know, I mean to other things, but I didn't hear no more.

 So, I don't know if it was submitted by Steve to Chris Kelly, the budget chief, or Wilf Wedmann to go to Sport Canada to ask for an additional \$3,000.00. I

25

have absolutely no idea what happened, but I didn't hear no more. That was fine.

Q. And as a result without the funding I take it that you did not commence an analysis on your own?

5

A. No.

Q. And have any further steps been taken by you to follow up with the CTFA since that date --

A. No.

Q. -- about the status of this proposal?

10

A. No.

Q. Is this something that you still feel would be of assistance to the Canadian Track and Field Association and to Sport Canada in looking at carding?

15

A. I believe quite strongly that Sport Canada should commission a study on their existing carding system because outside of the hopeful card, which commenced a couple of years ago, the system has remained static and the sport is moving forward.

20

THE COMMISSIONER: But so far I gather that the CTFA has not changed their position on it, because they are in the Quickfacts that were brought forward today they indicate that is the standard to which they are --

THE WITNESS: Yes. The CTFA in the shape of Steve Findlay wanted to change.

25

THE COMMISSIONER: Apparently not the Board

so far, as far as you are aware?

THE WITNESS: Not as far as I am aware. I know the staff wanted to change it.

THE COMMISSIONER: All right.

5

MS. CHOWN:

Q. Mr. Smith, before we turn to the question of Olympics entrance standards, I want simply to ask you whether you have any other views as to the factors that should be taken into account in carding, apart from the analysis of the world list that you have mentioned, and looking at the age of athletes and so on that you did in your maturational study?

A. I think, and I may have mentioned this earlier, that to me anyway head-to-head competition should be a factor, head-to-head competition vis-a-vis the Canadian championships, if you like.

Q. I am not sure I know what you mean by head-to-head competition.

THE COMMISSIONER: In other words --

THE WITNESS: One against one, like a boxing match, one on one.

MS. CHOWN: All right.

THE COMMISSIONER: You couldn't just take somebody's record from the year before --

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THE WITNESS: That is right. You can't claim carding status on the basis of one performance achieved ten months prior to carding date type of thing, and that we should look at our Canadian championships, which, after all, is our shop window and utilize that somehow in the carding concept.

Following on from that, we should definitely look at age and maturity factor.

Now, I recognize this has come in existence at the hopeful level, but I still feel at the top 8, top 16, there's been absolutely no change in that area. And I personally feel that age and maturity as a factor, has a bearing on our Canadian athletes that we have to somehow come up with a system that can help them get from age 21 to 29 so that suddenly they become a fully fledged javelin thrower at the world level.

THE COMMISSIONER: Would the age card cover those men, now, those athletes?

THE WITNESS: I think the hopeful card will to a certain degree take care of that to a certain degree.

THE COMMISSIONER: Okay.

MS. CHOWN:

Q. Then --

A. Sorry.

Q. I am sorry, I didn't want to cut you off. Was there anything else you wanted to add?

A. I was just going to say championship results which I know we use these at the Olympic level and
5 the world championships level, but I also feel there is other competitions that should be used as a measuring yardstick, i.e., the Pan-American games. You can either include the Pacific Conference Games. You can use the Fiji or World Student Games. All these are major games.
10 And our Canadian athletes, to be fair to them, this should be a classification, if you like, built in to the system.

And I am not saying that even by virtue of doing that it is going to be easy or easier, but what I am saying is that let's sit down together and develop a
15 system which may reflect better, more harmonious development, if you like, between the athletes and Sport Canada.

Q. I would like to turn now with you, Mr. Smith, to the issue of standards set to enable a Canadian
20 competitor to compete in the Olympic Games. And the Commissioner touched on this earlier, and I indicated that at that point you had in fact done a separate analysis relating to Olympic entry standards.

Mr. Commissioner, if I could put this
25 analysis before you.

THE REGISTRAR: 265, Commissioner.

THE COMMISSIONER: Thank you.

5 --- EXHIBIT NO. 265: Analysis of Cecil Smith relating to
Olympic entry standards.

MS. CHOWN:

10 Q. Mr. Smith, just so we can identify what
you have done here, Exhibit 265 contains four pages. The
first two pages relate to statistics in track and field
for entrance standards for the 1984 Olympic Games?

A. Yes.

15 Q. And the last two pages is the same
information with respect to the 1988 Olympic Games?

A. That's correct.

20 Q. And looking at the first page, you have
on the first page at the left-hand side a list of events,
100 meters, going down through the various distances
ending with the 400 meter hurdles on the first page, the
second page dealing with other field events, high jump,
pole vault, discus, et cetera.

A. Uh-huh.

25 Q. Divided into men and women. Looking at
the men, at the far right-hand side is the IAAF standard.

So, for instance for the 100 meters in 1984, the IAAF standard for entry to that event was 10.44?

A. That's correct.

Q. Immediately to the left of that column is a column entitled "COA Standard" which I understand to be the standard set by our own Olympic Association?

A. Uh-huh.

Q. And in that case of 100 meters in 1984 that was 10.33?

A. That's correct.

Q. A stricter standard than the IAAF?

A. Yes

Q. Finally, to the left of the Olympic standard is a column entitled "Canadian record"?

A. That's correct.

Q. And I understand that to be the all-time Canadian record in each event -- in this case we're looking at the 100 meters -- to that time?

A. That's correct.

THE COMMISSIONER: I'm sorry, 10.12?

MS. CHOWN: In 1984, the Canadian record for the 100 meters was 10.12.

THE COMMISSIONER: By an athlete still in competition, or does he keep that forever?

THE WITNESS: Sorry, sir?

THE COMMISSIONER: Well, what does this show?

THE WITNESS: What I was trying to show here, sir, is the comparison of the Canadian record as it pertains to Olympic selection, as it pertains to the standard as laid down by our federation, the IAAF, to gain admittance to the Olympic Games.

THE COMMISSIONER: Well in other words, to gain admittance in 1984 for the 100 meter, you'd have to be able to run 10.33 or better; is that right?

THE WITNESS: Yes.

THE COMMISSIONER: Well, what's the 10.12

got to do with it?

THE WITNESS: Well, I'm just showing that the 10.12 was the Canadian record for the 100 meters.

THE COMMISSIONER: I see.

5 THE WITNESS: Can I just interrupt? I seem to have misplaced the 1984, and I was flying by the seat of my pants.

MS. CHOWN: Let me put another copy in front of you.

10 THE WITNESS: Thank you.

THE COMMISSIONER: But the Canadian Olympic Association standard, is 10.33 the base? In other words, I have to run 10.33 or better to qualify for the Olympics in '84?

15 THE WITNESS: Yes. What we're trying to show here, Mr. Commissioner, is that Canadian track and field, we're responsible for our sport in this country, and the international federation is responsible for the sport throughout the world. They determine the standard, and in this case for the 1984 Olympics in the 100 meters, men of 10.44.

20

THE COMMISSIONER: That would be the 8th best -- or might not be. I see.

THE WITNESS: No, no. That's to get --

25 THE COMMISSIONER: In other words, you have

do run 10.44 or better to compete, to meet the IAAF standard, right?

THE WITNESS: Right.

THE COMMISSIONER: But the COA standard is
5 10.33?

THE WITNESS: That's right. The COA would then come along and lower the standard or higher the standard, depending on which way you look at it, to 10.33. They would make it stiffer for that athlete to get into
10 the Olympic Games.

MS. CHOWN:

Q. If I could just stop you there, Mr. Smith. I believe that's the first point you're trying to
15 make with Exhibit 265, that almost invariably the Canadian Olympic standard was stricter than the IAAF standard for a particular event?

A. Yes.

THE COMMISSIONER: Well, would every
20 Olympic association follow the IAAF standard? What was the American Olympic Association standard?

THE WITNESS: They don't do it. The American system, rightly or wrongly -- in my opinion it's probably the best system, the first three past the post,
25 as long as you meet the standard, you're on the team and

away you go. They do not supersede the IAAF standard because they've got so much depth. Unfortunately, we don't have the depth, or the Canadian Olympic Association --

5 THE COMMISSIONER: Sorry. Do the Americans follow the IAAF standard?

THE WITNESS: Oh, yes. All the world follows 10.44. No one can enter that competition -- well, one can enter the competition if no one else has done the standard, but it's fair to say that no one will enter the competition unless they've run 10.44.

THE COMMISSIONER: But in Canada, you couldn't make the Olympic team unless you run 10.33?

THE WITNESS: That's right.

15 MS. CHOWN:

Q. And there is no similar standard set by the United States Olympic Committee.

A. No, no. They are strictly three past the post.

THE COMMISSIONER: But within the IAAF standard, though?

THE WITNESS: Oh, yes. Everybody has to achieve, and I personally have no quarrel with the IAAF standard because it's set within the sport, by the sport,

for the sport; and seeing as the sport is responsible for itself for four years, then someone comes along for five days every fourth year and takes over, and this is what -- this again hampers growth in --

5 THE COMMISSIONER: I notice in 1988, the IAAF standard for the 100 meters was the same as it was in '84, right? 10.44?

 THE WITNESS: Yes.

10 THE COMMISSIONER: But our Canadian Olympic standard went from 10.33 down to 10.29?

15 THE WITNESS: What they would do, we would submit a list of names to the COA. We would meet with the COA and deliberate over whatever. If somebody was very close to a standard, we would try to justify the inclusion of our athlete for varying reasons. Sometimes they would accept the rationale and other times they wouldn't accept the rationale. But you were constantly having to select a team, if that's the right term to use, and then attend the COA meeting at a hotel in the airport strip and make a presentation. Until that time, you couldn't confirm who was on the team.

20 THE COMMISSIONER: But you might get somebody in, who can't do 10.29, by persuasion?

25 THE WITNESS: You had to show with the infamous word of "reasonable probability".

THE COMMISSIONER: I see.

THE WITNESS: That's another word that we've come to love in our sport is reasonable probability.

5

MS. CHOWN:

Q. And Mr. Smith, if I could, the second point that I understand you're trying to make by Exhibit 265 is to point out that not only is the Canadian Olympic standard invariably stricter than the IAAF standard, but in a number of events, and I believe it's 10 in the 1984 Olympics for both men and women, the Canadian Olympic standard was in fact higher than the all-time Canadian record?

10

A. Yes.

15

Q. And an example of that, for 1984, if we look at the 5,000-meter event for men, the IAAF standard for that event was 13:35.00. The COA standard was stricter at 13:26.00, and in fact the all-time Canadian record in the 5,000 meters was at that point 13:29.18?

20

A. That's correct.

Q. And in the 1500 meters, in order to meet the COA standard, one had to equal the all-time Canadian record of 3:38.00?

25

A. That's correct.

Q. So there are two events in the men's

track, one event in the women's track, being the 800 meter where the COA standard is stricter than the all-time Canadian record.

5 If we go to the second page of Exhibit 265, in the other events, we have four field events for men being pole vault, long jump, triple jump and hammer where the Canadian Olympic standard was stricter or higher than the all-time Canadian record?

A. That's correct.

10 Q. And on the --

THE COMMISSIONER: In the long jump?

MS. CHOWN: In the long jump, the --

THE WITNESS: Men.

15 THE COMMISSIONER: I'm looking at long jump men. The long jump is not so.

MS. CHOWN: That's correct. The Canadian Olympic standard was --

THE WITNESS: I'm sorry. Triple jump.

MS. CHOWN: Triple jump.

20 THE WITNESS: Not long jump.

MS. CHOWN:

25 Q. So the events for the men were the pole vault, triple jump and hammer. And for women, we had the javelin --

A. Shot put.

Q. -- and the shot put, and in the long jump, one had to equal the Canadian record.

We go forward to 1988, Mr. Smith. Again the same comparison can be made of the Canadian Olympic standard with the IAAF standard. In 1988 in four events, two for men and two for women, the Canadian Olympic standard was higher than the all-time Canadian record?

A. Yes. Furthermore, if you take it a step further, if you look at the 100 meters, the COA standard, 10.29 --

Q. We're now looking at 1988?

A. Sorry. In 1988 --

Q. Yes.

A. -- the Canadian standard, the COA standard is 10.29. I'll have you know that in Seoul, only 12 athletes achieved that standard in the quarter finals. Only 70 athletes -- it sounds like a lot, but we're talking about the world -- only 70 athletes had already made that standard. Here we are establishing a standard where only 12 men did that leading into the final, 12 in the quarter final.

If you look at the 800 meters, the COA standard is 1:46.17. Only 7 men ran that time in the quarter final. Only 66 ran it worldwide. So why do we

have such a high standard? Because if you continue on the
with the 800 meters and look at the IAAF standard of
1:46.80, 20 made it in the quarter final; 95 made it
worldwide. So why are we trying to establish standards
5 which, not just in my opinion but many of the coaches'
opinions, are far too stringent for Canadians to aspire to
represent their country at the Olympic Games?

Furthermore, I'd like to say that here we
have another situation which we are in control of. The
10 COA is in control. The COA does not have to establish
standards in our sport.

THE COMMISSIONER: They just follow the
IAAF standards?

THE WITNESS: That's right. So if you're
15 setting standards, what's your philosophy? Well, we know
the philosophy is excellence. If I hear much more about
we've got to move Canada up to the top six in the world or
the top five in the world, the top four in the world, I
say my reaction is who cares? Who cares? As long as we
20 are conducting clean, honest competition and we can have a
flock of gold medals, great, there is wrong in winning.
But why must we force performances which far exceed, in
numerous cases, Canadian records, stunting the growth of
this sport? Canadians should aspire to the Olympic Games.
25 They should only follow the International Amateur Athletic

Federation standards, not the COA.

MS. CHOWN:

5 Q. We have heard that it's possible for a country to send one athlete, if there are no athletes who meet the IAAF or the COA standards. What is your view as to, number one, should we be sending an athlete who does not meet the standard and, if so, what factors should be applied to make that decision?

10 A. I believe that regardless of performance, and I've written quite extensively on this, that the Canadian champion, never mind if they can't meet the qualifying standard in the Olympic Stadium in Seoul, should have the right as a Canadian. They are the best in
15 Canada. Whether we like it or not, they should be there. So we should, wherever necessary, send a minimum of one athlete per event. Never mind about the standard because the IAAF states you can enter one without standards. If more than one does it, then you've all got to do it. Fair
20 game.

Q. Thank you. Mr. Smith, I'd like to turn your attention now, if I could, to the question of the use of performance-enhancing drugs in track and field and your own exposure to this and information about it. May I
25 start first of all with your own career as an athlete in

Britain in the 1950s. Were anabolic steroids, to your knowledge, part of the sport that you participated in then?

5 A. Well I've got to smile, I suppose, because I never heard of them as such. I heard of amphetamines, and I remember a British cyclist whose name was Simpson who died in the saddle in the Tour de France in 1960-ish. I remember that. He was actually pedaling away, but he was dead for about the last 20 meters. It
10 was a reaction of his legs, but he died in the saddle, and he was a top cyclist at the time. He was the yellow jersey.

 I never heard of anabolic steroids. I may have heard of stimulants, but I come from Wales. It's a
15 small town.

 Q. We've also seen on your curriculum vitae, and you've mentioned earlier, the fact that you did coaching both in Britain and in Canada?

 THE COMMISSIONER: What year? Those were
20 in the 50s?

 MS. CHOWN:

 Q. In the 50's, and when you came to Canada, which would have been in the early 70s --

25 A. '73, yes.

Q. -- '73, I believe, you were coaching the Etobicoke Striders?

A. I'd like to just backtrack. I remember when we were having our Olympic training camps in Britain at Crystal Palace, there was talk at that time of drugs. I remember Peter Gabit (phon), who was our top decathlete at the time, the record holder actually, talking about drugs in sport, but not steroids or anything like that.

I suppose I first came into contact, into real contact, when I was at the '72 Olympics. As usual, Mr. Commissioner, the rumors were going around. They've been going around ever since at every Olympics that you were going to, that there were positive readings at the '72 Olympics. Remember, anabolic steroids wasn't on the hit list at that time. Anyway, there was no proven positive readings at the '72 Olympics.

And then some years after that, I read a document by Dr. Beckett. He stated that 0.5 percent of athletes, of all the athletes at the '72 Olympics, had positive readings. In Montreal, rumors again.

Q. This is the 1976 Olympics?

A. '76 Olympics, but to hasten along, '83 Helsinki. You know, now my knowledge is getting great, because when you mix and match with some of the European media who are far more versed in sport in general than the

North American counterparts because they are exposed to it more, I was beginning to pick up what really was going on. Even though it involved rumor and conjecture, one has to listen. In Helsinki, it was rampant that there were
5 definitely positive readings in Helsinki at the time, although none came out.

Q. We've seen in Exhibit 262 your correspondence with the Minister, that you were making references at that point to drug use in your sport?

10 A. Yes.

Q. Were those references with a view to the international scene or to the Canadian scene or both?

A. No, the international scene, because I've been in this sport all my life. Now I was beginning
15 to get the vibrations very strongly, especially at the '83 Helsinki. Probably at the Commonwealth Games, Brisbane, there was rumors flying. 1980, Moscow, we didn't go there. Probably they were just as rampant there. Now I was beginning to get the feel that suddenly drugs were
20 really in the sport and that we have to do something about this. I know that Tom MacWilliam, who was in charge of doping control in Canada at that time, and Don Fletcher, they were trying -- I remember reading in 1982 the
25 implementation for random testing. I don't know what happened.

Q. Can I just clarify. What was your view, if you had one, of the extent of drug use on the Canadian scene in the early 1980s?

5 A. When you say early, up to 1983 or something?

Q. Up to 1983.

A. Absolutely no idea. I didn't. Why should I? I mean, everything was progressing well. For people to say that Ben Johnson showed remarkable
10 improvement, I'd say poo-pah to that. Here's the statistics. He progressed in a normal fashion.

Q. All right. Dealing solely with Canadian athletes and in particular with Ontario athletes, can I ask you first of all whether in your capacity as
15 executive director of the Ontario Track and Field Association, you were attending meets regularly in the province of Ontario and observing Ontario's athletes over the years in the 1980s?

A. Yes.

20 Q. And as a result of that, let us say from 1980 onwards, did you make any observations or hear any information about --

THE COMMISSIONER: He's already covered up to '83, Ms. Chown. He said he's not aware of anything up
25 to '83.

MS. CHOWN:

Q. I'm sorry. I thought my question was directed to '83 onward. What observations did you make, if any, concerning Canadian athletes and in particular athletes within Ontario?

A. Two things, maybe three, stick out in my mind. First, it was the World Cup trials in Puerto Rico. I was there with the media.

Q. What year was that?

A. '85. Yes, Canberra, but this is Puerto Rico for the trials.

Q. Right.

A. I remember young Cheryl, Cheryl Thibedeau, in the 400-meter final. If she had continued running the last 150 as fast as she had run the first 250, she would have set a world record that day because she really motored.

Anyway, the significant thing there was when she crossed the line, she was very distraught because she had run into total exhaustion. She was rigormortis right through the system. She staggered across the line and then she lay prostrate on the floor, on the ground. I remember Charlie running over and Doug Clement, who was the team doctor at the time, and I sort of wandered over.

I just looked down, and I have no medical background, but to me, Cheryl, it was either heat or something, because she was sort of shaking and her eyes were like flickering. I didn't know what it was. I just walked away. I don't
5 know what I was thinking at that time.

However, following on from that, the next thing that struck me was again young Cheryl, because although I didn't know her to talk to, I knew her sufficiently to say "Hello, how are you?", because she was
10 a very petit, attractive girl. It was in the winter of '86 I heard a rumor, "Wait until you see Cheryl."

So anyway, I seen Cheryl. I was talking with her.

Q. Can I stop you there. Who passed on
15 these rumors?

A. General track talk, you know, what you pick up on the street and what you hear from the athletes when you are going back and forth in a training environment. When you have 200 or 300 athletes training
20 in a closed confine like Metro Center, you pick up all sorts of rumor and scuttlebutt and things like that.

So anyway, I heard this and I went up and I was talking with Cheryl, and I had seen Cheryl before, and I must admit, she was on a very good weight training
25 program because she definitely had improved her

definition. Her upper body was very big. So that sort of got me thinking, I suppose.

The third --

5 Q. Let me stop you there, Mr. Smith. When you say that got you thinking and you made a comment that she must have had a very good weight training program, did you have any suspicions yourself at that time, based on your own observations as a former athlete yourself and as a coach, as to whether performance-enhancing drugs and, 10 in particular, steroids might be being taken by Ms. Thibedeau?

THE COMMISSIONER: I think he admitted it got him thinking.

15 THE WITNESS: It just got me thinking. I mean, I suppose you can think to yourself as long as you don't say anything. It just got me thinking. I don't know at that time. Maybe I did think of you know what, but I didn't do anything and I didn't say anything. I just observed.

20 THE COMMISSIONER: You said there was a third thing you were going to say?

25 THE WITNESS: Yes. The third thing that really startled me, having been close to Mark McKoy and Desi at Rome, I did not see them until the indoor Hamilton meet in Hamilton.

MS. CHOWN:

Q. You're now talking about the indoor
Hamilton meet in early 1988?

5 A. Yeah, January '88.

Q. Yes.

A. Following Rome '87.

Q. Yes.

10 A. Again I had been told that the boys had
really been pumping the iron and they were very big.
Anyway, I went up to them and I started chatting to them
on the infield, and I couldn't believe it. I mean, I've
known Mark and Desi for many years, longer than I'd known
Cheryl, and they had grown enormously since Rome, and that
15 was in the space of a few months.

Q. From August of 1987 to January --

20 A. Yeah. Well, when was Rome? September
I think it was, September, October to January of '88. And
they had grown quite significantly in upper body. I mean
Desi was a very thick-set person anyway, but Mark, for
those people who knew him, would only know him as a
willowy-type of hurdler. He didn't have any big
definition or anything. And suddenly the boys were quite
big.

25 Q. Did you make any observations of Mr.

Johnson during this period?

A. Well, when Ben ran a 9.83 in Rome, and purely from a statistical point of view, I couldn't comprehend the improvement along with other international media simply because historically, and you can look at the books, you just don't go along in leaps and bounds of what Ben had done in Rome. If you were doing that, then you were defying history. There are not many things that defy history. You go within a hundredth maybe, two hundredths, if you're lucky. You're really blowin' in the sprints if you can improve a world record by three hundredths.

Well, Ben improved by much more, and I couldn't comprehend that. I don't know what I was -- I don't know. I was just staggered because I saw the race, and like everybody else I was very happy for Ben, and I wrote and congratulated him, wrote everything glowing; but in my heart I thought, boy, this is something. You know, the 9.83 is really something. To me, I consider myself a person who watches a sport not just in Canada but internationally, and because of my statistical background, I think I can analyze as well as anyone. I just couldn't accept that. My international partners, we were all the same. We were just shaking our heads. Wow, you know? I'm glad I was part of history, and I was pleased I was part of history too. We were all pleased to be part of

history because that was history, because we said then, "That record will not be broken until about the year 2050." From 1987 to 1988, it only lasted less than a year or something.

5 Q. You mentioned this series of events starting with Ms. Thibedeau in 1985, going up until early 1988. We've heard of these events as starting you thinking. What was your thinking in 1988?

10 A. Well, Mike Dwyer left Toronto, and he went to Simon Fraser University, and in December of '86, I believe, a series of articles appeared in one of the Vancouver Sun, I think, or Vancouver Province. They were picked up in Toronto, and Mike, I can't remember the exact wording he was using, but he was alluding to why he got
15 out of Toronto and maybe drugs. Again, I must confess, I can't remember the exact details. So he sort of was sounding the alarm bells at that time, in December of '86. I read that just like anyone else, but again like everybody else, I stand to be chastised because I didn't
20 do anything either.

 Q. Well, I forgot to cover something with you earlier, and that was, do you recall in 1985, Mr. Smith, ever receiving a telephone call from Glenn Bogue of
25 the Canadian Track and Field Association, the subject of which was a conversation that he had with, now we know,

Mr. Desi Williams? Do you recall Mr. Bogue contacting you in 1985 after receiving that phone call and passing on information about the call to you?

5 A. Glenn and I spoke lots and lots of times.

THE COMMISSIONER: He was your counterpart, in a sense, wasn't he, on the CTFA?

THE WITNESS: Well, he was athletes' services manager.

10 THE COMMISSIONER: You're right.

THE WITNESS: And we're all one big happy family, so we talked to one another, and I honestly cannot remember him telling me that Desi was a story. I did not -- I can't remember that.

15 MS. CHOWN:

Q. Leaving aside the question of whether a particular name or whether Mr. Williams' name was mentioned, did Mr. Bogue indicate to you in 1985 that he had received information from an athlete about drug use at the York Sprint Center?

20 A. I vaguely remember him telling me something along the lines that he had information about drug use at the Center, and I believe I said, "Well, be
25 carefully because, you know, if you've got no proof,

you'll get sued to high heaven."

THE COMMISSIONER: Did he tell you what his information was and where it was coming from, without naming anybody?

5 THE WITNESS: No, he didn't tell me where he got it from. He just said he figured he had evidence of drugs from someone within the group, and that's all I know. I know I cautioned him because like everyone of us, you had to be very careful because we've all got to put
10 bread on the table.

MS. CHOWN:

Q. What do you mean by that?

A. Well, I don't want to make categorical
15 statements without fact because it could be extremely libelous. When you have no fact, then you better proceed very cautiously. There was absolutely no evidence, as far as I know, of misuse of drugs or the use of
20 performance-enhancing drugs. I was not aware, other than, like others, the rumor, the wink and the nod. Yes, if that's being aware, I, along with hundreds of others including the media, were aware of this.

Q. Following this conversation that you recall having with Mr. Bogue in 1985 about the York Sprint
25 Center, did you continue to hear rumors and gossip about

activities at the York Sprint Center up to and including
1988?

A. Off and on. It was mostly with Glenn.
Glenn left in '86, I think, and Steve came on board. I
5 don't think -- well, Steve and I, we never talked about
drugs at the Sprint Center.

Q. Did you at any time have any direct
contact with Mr. Francis?

A. Not direct contact. We would talk
10 periodically. I remember at the Toronto Sun indoor meet
on the Saturday morning --

Q. Is this 1988?

A. -- 1988. On a Saturday morning, Charlie, myself, and my wife were sitting in Ken Twiggs' room on Sunday morning. And we chatted for about
5 two-and-a-half hours. And my wife thoroughly enjoyed it. And I must admit I enjoyed it.

Q. What was the topic of your chat?

A. He was telling us about international track, and about the scene. And if I had been smart
10 enough, I may have caught what he was saying between the lines, but I am not that bright in everything.

Q. Was he talking to you about drug use on the international scene in track and field?

A. Well, he wasn't so much saying about
15 the drug use, he was saying about Canada vis-a-vis the world. And going back to when he was an athlete in '72, because he competed at the '72 Olympics. And he was just giving me general chit chat. And my wife was absorbed in it. She thought he was the greatest.

Q. Were you aware that from time to time
20 Mr. Francis' athletes went for training camps in the island of St. Kitts?

A. Yes, like everybody else. St. Kitts started coming on the training scene and, again, I am part
25 of the so-called family, but I mean I don't, you know, I

don't administer the national funding or anything. So, I don't know what was going on. And it didn't weigh, it didn't catch me immediately as to why are they going to St. Kitts, because I had never heard of this guy, Dr. Astaphan, but they were going to St. Kitts all the time. And people were saying "What's in St. Kitts?"

Q. Did you make an effort at some point yourself to find out what was going on in St. Kitts?

A. Yes, I was invited -- I was invited to Puerto Rico in December of '88, I think it was, '88.

Q. Not '88?

A. '87. Well, whatever it was, December '88.

Q. Prior to the Olympics, was it? So, it would have been --

A. That's right, prior. Sorry, December '87.

Q. Yes.

A. That's right, prior to Seoul. And during one of the coffee breaks, you know, you mix and match, and you have loose chatter. People are there from different parts of the Caribbean, and I was introduced to this person from St. Kitts.

So, my interest peaked, obviously, I am only human, because I associated him with the training camps.

So, I asked him just why are our athletes always coming to St. Kitts, and who is this Dr. Astaphan that I am hearing all the time. And he told me that --

5 Q. This individual, I understand, was a coach?

A. I don't know what he was, but I didn't -- I don't know him -- well, I know him now, but I didn't know him then.

10 We chatted for about two or three minutes and then other delegates were asking me why are you guys always going to St. Kitts, there is nothing there but a couple of fields. I said, I don't know. And that was it. I mean that was the sum total of my so-called
15 this person got back to St. Kitts he was on the phone to Dr. Astaphan. And my name came up in a tape, I believe.

20 Q. Now, apart from those series of events and observations that you have described, is there any other information that you received or observations that you made that dealt with the possibility of steroid use by athletes in the Mazda group?

25 A. No. Again, I suppose like a bit of a gramophone, I did not have any conclusive proof. I saw some of the smoke, I suppose. I didn't take any action. We discussed -- I know I remember talking with Rolf Lund,

the President of OTFA, but I suppose when you reflect we should have been more aggressive in our stand.

I will say one thing that I was surprised to learn in Seoul that we didn't test Ben at the national championships. Let me clarify that. I was always under the belief, because I am not involved in the program, I was always under the belief that we tested all the winners.

Q. You were certainly aware that there were random selections of other positions --

A. I thought the others were random, that's what I firmly believed. And I had no reason to believe otherwise. Why should I?

However, I was nearly floored in Seoul when I hear that Ben wasn't tested prior to leaving Canada at our nationals. And then I was equally floored when I hear that Angella hadn't been tested for a couple years.

And I firmly believe, and I have said this on more than one occasion, that it behooves us to always test the winner, to protect the integrity of the winner, to protect the association and if -- and then random the others. And if we haven't got sufficient funds, and I know we haven't, if we haven't got sufficient funds, well at least we have got a policy.

Now, we can say to the media and general

public, our policy is we test the winners; however, we can only random because we do not have sufficient cash at \$300 a crack, I have been told, to test each individual event.

And I have said this on more than one
5 occasion, but again I stress that the program has nothing do with me, I am just part of the group and I offer my input. And then it is up to the others who can listen to other people and then come up with whatever they want to come up with.

10 Q. Let me just follow along on that, Mr. Smith. That's a view you came to after the events in Seoul and something that you believe would be an effective policy for the CTFA to have in place in the future.

15 Do you have any other views that you would like to share with us as far as testing go that might be of assistance to this Commission?

20 A. Yes, I am dead against the testing system as it pertains to out of competition. The best way to go, I believe, is what certain countries have and that is unannounced testing. The moment you phone, the moment you phone, the athletes and probably their medical back-up staff will eventually beat the system.

25 And I believe that we have to implement out-of-competition, unannounced testing, not the 48-hour phone call that I am coming. I cannot see the relevance

of this. However, I can understand the economic situation of why, because we are talking a lot of money to be able to do that. But nevertheless, I think it is an area that we should be looking towards developing.

5 I do believe, and because of my strong contacts with Britain, that Sebastian Coe, and I may be out of date on this, but I believe that Sebastian Coe heads up the British Sports Council, and they have implemented unannounced, out-of-competition testing.

10 So, I know that one or two other European countries they also have unannounced testing.

So, other than the law, and I am not a lawyer, other than the law, I cannot see, and the size of Canada, I suppose, I cannot see why we can't have
15 unannounced testing.

Furthermore, I believe that we should implement what I call or what's been called a "flying squad". I believe that it should be taken out of the hands of sport.

20 Q. Your are now talking about the body that would organize and run --

A. Yes.

Q. -- testing?

A. Yes. There should only be one body in
25 Canada. A multitude of Olympic sports and I spoke on this

at the COA meeting, you have got over 40 Olympic sports, if you multiply that by five per committee, you multiply all the coordinators, we have got thousands of guys running around and they don't know how to do it.

5 Q. What should a relationship of that body be to government and to the sports?

 A. I think they should be at arm's length. I think they should be funded, they should be specialists, they should have exercise physiology, or a scientific
10 background.

 They should have the power to do what, within the rules, they should have the power to carry out testing as and when they see fit unannounced. They should have the power to visit any championship in any sport and
15 at any time. They should not inform the sport because they are selfcontained, similar to the investment that the Brits did in Europe.

 They invested heavily in three or five huge testing caravans. I am not saying you could do that in
20 Canada because there is a lot different size of terrain, but nevertheless they were very serious at it there and they took it right away from the sport.

 And I believe it is better that way because then there is no come back on the sport of anything
25 untoward or things that may be wrong and so on and so

forth.

I would like to see the unannounced flying squad implemented if we are serious - if we are serious.

Q. A minor note that I meant to cover with you earlier, you have expressed some views over the years about your view that it is important to publish the names of those athletes who are tested, whether they test positive or negative. And in particular, you would look to publish those names in your magazine Athletics. Certainly we have had heard lots about athletes who have tested positive having their names published, why do you believe that athletes who test negative should similarly have their names published?

A. I suppose for basic protection. Some, a few years ago, there were rampant allegations that random testing in our sport wasn't random. Yes, this came from a narrow band, but nevertheless the perception was there that "this is not random, I am always tested". Statistically it can't happen, "I am always being tested", you hear this everywhere you go.

I am not saying it is true, but this is the allegation.

So, I felt that, well, what's the problem in every sixth month publishing a list of names of athletes who have been tested. That way a guy who lives in

Victoria and a guy who lives in St. John's, Newfoundland, can see that he is no more picked on than someone else.

Q. Is that now being done in 1989?

A. I believe -- I haven't seen or I may
5 have seen, I believe either I hear it or actually seen it written that we will be announcing every sixth month the names of the athletes who are being tested. And if that's true, then that's another, another step forward in our fight against drugs.

10 MS. CHOWN: Mr. Commissioner, those are the questions I have for Mr. Smith.

THE COMMISSIONER: Thank you. Any questions?

Would it be convenient for you to come back
15 tomorrow morning? You have had a rather long afternoon. Would that be satisfactory?

THE WITNESS: I don't mind going a little bit longer.

THE COMMISSIONER: Well, it is up to you.
20 I just thought you were -- okay, if you are fine, we will go.

MR. BUCKSTEIN: I was going to say, Mr. Commissioner, my examination of Mr. Smith might be quite lengthy and therefore it might be best to get a fresh
25 start in the morning.

THE COMMISSIONER: All right. It is your
lawyer.

All right. Tomorrow morning at 10 o'clock.

--- Whereupon the proceedings adjourned until Wednesday,
August 23, 1989 at 10:00 a.m.

